United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7442

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

OSCAR ROBERTSON, et al.,

Plaintiffs-Appellees,

WILTON N. CHAMBERLAIN, CLIFFORD RAY and CHESTER WALKER,

Appellants,

- against -

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants-Appellees.

76-7442
76-7451

JOINT APPENDIX

Volume I
1-499

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UNITED STATES COURT OF APPEALS
FILED
DEC 15 1976
DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

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Relevant Docket Entries

April 16, 1970	Filed Complaint and Issued Summons.
April 17, 1970	Filed Order to Show Cause temporarily restraining defendants from merger pending the hearing and determination of motion for a preliminary injunction.
May 4, 1970	Filed Order of Judge Charles H. Tenney preliminarily enjoining the defendants from merger with the American Basketball Association.
February 19, 1974	Filed Order to Show Cause preliminarily enjoining the prosecution by the ABA of California action pending hearing and determination of motion for a preliminary injunction.
March 11, 1974	Filed Notice of Motion to maintain a class action.
March 22, 1974	Filed Consent Order granting preliminary injunction enjoining the defendant ABA from prosecuting California action in the Northern District of California.
April 23, 1974	Filed Amended and Supplemental Class Action Complaint.
February 14, 1975	Filed Opinion of Judge Robert L. Carter, certifying (b)(1) class and denying NBA motion for summary judgment.
July 8, 1975	Filed Opinion of Judge Robert L. Carter ruling that defendants are not barred, at this stage, from raising all possible defenses to plaintiffs' action. The motion to dismiss amended count three of the ABA cross-claim is granted. The motion to overrule plaintiffs' objection to class discovery is granted to the extent so stated.

September 15, 1975	Filed Consent Order of Judge Robert L. Carter that notice of pendency together with a notice of deposition and document demand in the form annexed be sent to all class members other than the plaintiffs herein who were player representatives of players on an NBA team. Ordered that the notice of pendency in the form annexed be sent to all other class members.
January 13, 1976	Filed Order to Show Cause of Judge Robert L. Carter for an injunction preliminarily enjoining Wilton N. Chamberlain from prosecuting action in United States District Court for the Central District of California.
February 4, 1976	Filed Order to Show Cause for a preliminary injunction enjoining Chester Walker from prosecuting an action in the United States District Court for the Eastern District of Pennsylvania.
March 3, 1976	Filed Opinion of Judge Robert L. Carter ordering that, pending a final determination of the action, plaintiff Walker is enjoined from prosecuting his action in Pennsylvania.
March 31, 1976	Filed Opinion of Judge Robert L. Carter granting defendants' motion preliminarily enjoining Chamberlain from prosecuting his action in California.
April 23, 1976	Filed Notice of Appeal of Wilton N. Chamberlain.
April 30, 1976	Filed Stipulation and Settlement Agreement.
May 5, 1976	Filed Settlement Order No. 1 that a notice of class action settlement be mailed to all class members.
August 2, 1976	Filed Opinion of Judge Robert L. Carter approving settlement agreement and overruling objections.

August 4, 1976	Filed Final Consent Judgment of Judge Robert L. Carter.
August 27, 1976	Filed Notice of Appeal by Wilton N. Chamberlain.
September 1, 1976	Filed Notice of Appeal by Chester Walker and Clifford Ray.
October 7, 1976	Filed Certification to the United States Court of Appeals for the Second Circuit.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - -x

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

- - - - - - - - - - - - - - - - - -x

70 Civ. 1526

ORDER TO SHOW CAUSE

Upon the complaint herein and annexed affidavit of Lawrence Fleisher, sworn to April 17, 1970, it is

ORDERED, that defendants show cause before this Court, in Room 506, United States Court House, Foley Square, New York, New York on the 1st day of ~~April~~ May, 1970 at 10:00 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why an order should not be made, pending the trial of this cause, enjoining defendants and each of them, their agents, servants, employees and attorneys and all persons acting in concert with them, from taking any steps in furtherance of an attempt to (i) consummate any merger, consolidation, acquisition or combination by any means between defendant National Basketball Association and defendant American Basketball Association or any of their member clubs, or (ii) effectuate a non-competition agreement, pending consummation of such merger, consolidation, acquisition or combination by any means,

between the National Basketball Association and the American Basketball Association or their respective member clubs; and

IT APPEARING TO THE COURT that immediate, substantial and irreparable injury to plaintiffs may occur if defendants and each of them, their agents, servants, employees and attorneys and all persons acting in concert with them do effectuate or consummate such merger, consolidation, acquisition or combination by any means or such non-competition agreement; and

IT FURTHER APPEARING TO THE COURT that adequate reason has been given for the granting of this order without notice to all defendants, inasmuch as (i) defendants are engaged in secret negotiations, having refused to reveal any details about their plans; (ii) it has been reported in the press that the actions complained of are planned to take place imminently; and (iii) it is not known what counsel will appear for all the defendants and notice by telephone has been given to those attorneys whom plaintiffs believe are counsel for the National Basketball Association and American Basketball Association, it is further

ORDERED, pending the hearing and determination of the motion for preliminary injunction brought on by this order to show cause that defendants and each of them, their agents, servants, employees, attorneys and all persons acting in concert with them be and they hereby are

temporarily restrained from taking any steps in furtherance of an attempt to effectuate or consummate by any means any such merger, consolidation, acquisition, combination or non-competition agreement, and it is further

ORDERED, that the within temporary restraining order is conditioned on a bond being filed by plaintiffs herein in the sum of $25,000 for the payment of such costs and damages as may be incurred or suffered by any party.

Sufficient cause appearing, let service of a copy of this order, together with a copy of the affidavit of Lawrence Fleisher upon which it was procured, be deemed good and sufficient service if made as follows on or before 5:30 P.M. on April 17, 1970:

(a) On defendants National Basketball Association, its 14 member basketball clubs and the 14 members of its Board of Governors, by leaving a copy of the same at the office of the National Basketball Association at 2 Pennsylvania Plaza, New York, New York and by serving a copy of the same on whom plaintiffs believe to be the attorneys for the National Basketball Association, Proskauer, Rose, Goetz and Mendelsohn, at their offices at 300 Park Avenue, New York, New York.

(b) On defendant American Basketball Association by serving a copy of the same on

whom plaintiffs believe to be its attorneys, Regan Goldfarb Powell & Quinn, at their offices at 445 Park Avenue, New York, New York and by leaving a copy of the same at the office of the American Basketball Association at 1700 Broadway, New York, New York.

April 17, 1970

S/ Lloyd F. MacMahon
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -x

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

- - - - - - - - - - - - - - - - - - - -x

70 Civ.

AFFIDAVIT IN SUPPORT OF TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

LAWRENCE FLEISHER, being duly sworn, deposes and says:

1. I am a member of the Bar of the State of New York; have represented the plaintiffs' Players Association as its attorney for the past 7 years; have negotiated many player contracts with owners of clubs in defendant National Basketball Association (the "NBA"), including contracts of established NBA players and college players entering the NBA; have counseled more than 20 other NBA players who have negotiated their own player contracts; am generally familiar with the levels of compensation of the plaintiff NBA players and with the operations of the NBA; and have read the complaint herein and believe the allegations therein to be true, based on documents and information supplied to me by plaintiffs and defendants.

2. I make this affidavit in support of the motion brought on by the annexed order to show cause seeking:

(a) a preliminary injunction restraining defendants and those the plaintiffs and I believe to be acting in conjunction with them from

(i) taking any steps in furtherance of an attempt to effectuate or consummate a merger, consolidation, acquisition or any other combination by any means between the NBA and defendant American Basketball Association (the "ABA") or any of the ABA's member clubs and

(ii) taking any steps to effectuate a non-competition agreement between the NBA and ABA or their respective member clubs prior to consummation of the merger;

and also seeking

(b) a temporary restraining order prohibiting such conduct, pending the hearing and determination of the preliminary injunction motion.

3. No prior application has been made for the relief requested herein.

4. This motion for a preliminary injunction and temporary restraining order is directed solely to the gravamen of COUNT THREE of the verified complaint herein (and of COUNT TWO thereof insofar as it alleges): the plan and scheme by defendants to effectuate a merger and/or a non-competition agreement between the sole competitors in

major league professional basketball in violation of Sections 1 and 2 of the Sherman Act. As used in these proceedings the term "merger" includes any transaction by which the two competing leagues will combine so as to form one league or so as to eliminate existing competition between them in the acquisition, allocation and employment of the services of present and future professional basketball players, and the term "non-competition agreement" includes any agreement by which such competition is or tends to be eliminated or restricted prior to consummation of the merger.

5. The identities of the parties and the ultimate facts giving rise to such antitrust violations are set forth in the verified complaint. This affidavit will deal with the relevant product and geographic markets, the nature of the proposed merger and the non-competition agreement (to the extent information about them has become available despite the secrecy of defendants' negotiations), the salutary effects of existing competition, and the substantial, immediate and irreparable injury to plaintiffs that any such merger will cause or the non-competition agreement now causes.

The Product Market

6. The market which defendants are restraining and combining or conspiring and attempting to monopolize, and will monopolize if the merger or non-competition

agreement is effectuated, is major league professional basketball.

7. Professional basketball is an inherently different market from any other business because of the distinctive product or service which it offers to the public. This product or service is the staging or exhibition by defendants, for a profit, of the talents of players whom defendants have always claimed possess extraordinary and unique skill. No other sport involves skills which compare with the skills of such players. Professional basketball is not interchangeable with any other business from the point of view of: the consuming public, which "purchases" the right to view such skills, the television and radio networks and stations which pay enormous sums to the NBA for the right to telecast and broadcast basketball games; and the players themselves, whose athletic skills are peculiarly suited to this and no other business.

8. The market of professional basketball differs from the market of college, and other amateur, basketball for many reasons, including those discussed in paragraphs 9-12, below.

9. Professional basketball is run as a business for the benefit of team owners and stockholders; college basketball is operated as an adjunct to a college's educational program, primarily for the benefit of students and alumni. The business orientation of professional

basketball is exemplified in many ways which distinguishes it from college basketball.

(a) Professional clubs can be and are sold to new owners. The sales price of some NBA clubs has been reported to be in excess of $6,000,000.

(b) Professional clubs can be and are transferred from one "home" city to another for financial reasons.

(c) New clubs representing cities which desire to enter professional basketball must pay an entry fee. These new entrants--so-called "expansion" teams--are not to be confused with the clubs in the ABA which will be involved in the proposed merger of the two leagues; they are new teams which have never been in existence. For example, the NBA has exacted an entry fee of $2,000,000 from each of the newest "expansion" teams which have sought and been granted franchises since 1966. Five "expansion" teams have been added to the NBA since then. It has been reported that the entry fee for the three new "expansion" teams expected to join the NBA next season will be considerably in excess of that amount.

10. The ticket price for most college games is much less than for professional basketball games, and the

price paid by television networks for the right to televise college games is much less than the price paid by the American Broadcasting Company ("ABC") for the right to televise NBA games weekly over its national network. It was recently reported in the press that ABC has just signed a two-year, $17,000,000 contract with the NBA for such telecasting rights. ABC paid the NBA $1,200,000 for such rights for this season. This is ample evidence that professional basketball is a big, prosperous and growing business.

11. The skills of professional players are much greater than those of most college players; only a few of the best college players qualify each year to play professionally. While there are hundreds of thousands of amateur players in the United States, there are only a few hundred professional players.

12. Professional players play basketball from coast-to-coast, as a full-time occupation for remuneration, while college players are not paid, are full-time students, play many fewer games per year, in a much more local setting.

13. Professional major league basketball is vastly different from professional non-league exhibition or barnstorming basketball, which is epitomized by organizations such as the Harlem Globetrotters. In professional league basketball, as played in the NBA and ABA, competing teams play an integrated schedule within

a league structure. The NBA, for example, is now split into two divisions, seven teams in each division. A regular season of 82 games (running from October through March) is played by all teams. The four teams in each division with the best winning percentages during regular season play then enter into an elimination play-off series to determine the division champion. Then the two division champions play a seven-game series to determine the league champion. The total income of players and owners alike is contingent upon a team's standing after the regular season and upon its success in the play-offs.

14. Non-league professional basketball involves a totally different set of economics and rules. There is no structured team competition, no set playing season or play-offs that determine revenues for teams or players. As in college basketball, ticket prices are on the whole much lower for this brand of basketball, and many of the financial considerations, described above, of the professional leagues are totally inapplicable to it. There are no home cities; teams, like the Globetrotters, barnstorm across all continents, in one-night stands. The games are designed, and many of the significant rules of basketball are waived, so as to provide vaudevillian entertainment to the spectators.

The Geographic Market

15. The market of major league professional basketball covers the entire United States. NBA "Games of the Week" are telecast by ABC on Sundays across the country on its national network, and other games of many NBA teams are televised and broadcast more frequently on a local and regional basis.

16. The home cities in which NBA clubs play are New York, Milwaukee, Baltimore, Philadelphia, Cincinnati, Boston, Detroit, Atlanta, Los Angeles, Chicago, Phoenix, San Francisco, Seattle and San Diego. Often, home games are scheduled for different cities, e.g., Cincinnati plays "home" games in Cleveland. The NBA teams travel cross-country, playing each other; half their games are played at home and half on the road.

17. The ABA teams play games, according to a similar schedule, in New York (Nassau County), Washington, Pittsburgh, North Carolina (three different cities), Miami, New Orleans, Dallas, Los Angeles, Denver, Indianapolis and Louisville.

Participants In, And Nature Of, The Proposed Merger And Non-Competition Agreement

18. The defendants have been and now are secretly meeting to plan and negotiate the merger and to effectuate the non-competition agreement. They have released no details of their plans to the plaintiffs, whose

careers are vitally affected.

19. While defendants have kept secret from the plaintiffs any details, including the timing, of their anticompetitive plans, the following is known:

(a) The NBA advanced its college player draft to March 23, 1970 to combat the ABA, whose teams had by that date signed five of this season's top college stars for sizeable bonuses. Pursuant to its draft, the NBA signed many other college stars for even larger bonuses. Competition for all such players prior to effectuation of the proposed merger has been extremely keen; such competition will end immediately upon effectuation of the merger.

(b) The NBA and ABA and their respective clubs have recently entered into a non-competition agreement, pending a formal merger, whereby no club in one league will negotiate with any player from the other league. This agreement was reported to have been announced by the Commissioner of the ABA on March 25, 1970 and is described in the New York Post article of that date annexed hereto as Exhibit A. A Washington Post article of April 9, 1970, annexed hereto as Exhibit B, shows that the non-competition agreement was entered into and is continuing so as not to permit competition to jeopardize the on-going merger negotiations.

(c) Defendants have been negotiating since approximately February 6, 1970 with respect to the merger. Their representatives requested that plaintiffs forbear from bringing this action to prevent the merger until defendants agreed upon terms and the merger became imminent. Plaintiffs agreed to wait only in the hope that the merger would not materialize. Plaintiffs can now no longer wait; if the status quo is to be preserved defendants must be enjoined now before any interested party acts in reliance on an effectuated merger.

(d) The merger is now imminent. Exhibit B reported that as of April 9, 1970 the two leagues were very close - perhaps only a matter of days - to agreement on terms for a merger. Two days later, as reported in the New York Times article of April 12, 1970, annexed hereto as Exhibit C, the defendants reached an agreement in principle to merge. As an adjunct thereto or as part of the non-competition agreement, they also agreed to engage in a concerted allocation - the "common draft" - of college players even prior to formal merger.

(e) The NBA will be the sole surviving major professional basketball league upon consummation of the merger; whatever legal form the transaction takes, the ABA will disappear as a competitive factor.

(f) The ABA teams that will come into the NBA structure will pay an indemnity to the NBA of approximately $11,000,000.

(g) As additional consideration, the ABA will drop the federal antitrust suit it has filed against the NBA in the Northern District of California.

20. The parties to the merger and non-competition agreement are the two rival leagues and all their member clubs. Twelve of the member clubs of the NBA are owned by corporations. The ABA is a corporation and most, if not all, of its member clubs are owned by corporations. The NBA itself, however, is not a corporation but a joint venture.

Competition Under the Status Quo

21. The NBA and ABA are the sole competing leagues in the market of professional major league basketball in the United States. Thus, it is a highly

concentrated industry. There is no competition among teams within each league for the acquisition of the product or service at issue here--the talents of the players--because of the restrictive practices concertedly imposed on the players by defendants, such as the "reserve" clause, blacklists, college player draft and other agreements set forth in the complaint (¶s 21-27 and 35).

22. The sole competition in the acquisition of player talent in this market exists between the two leagues. Such competition is presently active, and at times fierce, for acquisition of established players and fledgling players coming from the college ranks. This is the status quo defendants' plan seeks to upset. A merger of the two leagues, and effectuation of the non-competition agreement between them prior to merger, would eliminate all competition in the acquisition, allocation and employment of all established players and college players. A 100% monopoly in such market will be created if defendants' plan succeeds.

23. This competition has flourished since the advent of the ABA as a rival league in 1967. Since 1946 when the NBA (actually its predecessor, the Basketball Association of America) came into being, and until 1967, the NBA had a 100% monopoly in professional major league basketball (except during the aborted existence of the American Basketball League in 1961-62). Because of its monopoly position, and through the concerted practices

referred to in paragraph 21, the NBA defendants were able to eliminate all competition among its member clubs for the acquisition, allocation and employment of professional basketball players.

24. The elimination of such intra-league competition, which enhanced and perpetuated the NBA's monopoly position, had the effects described in the complaint (¶ 36). Since no competition for playing talent existed, NBA players were bound to one NBA club for their entire careers, or less involuntarily "traded" or "sold". If a player refused to sign a contract he did not play major professional league basketball anywhere, since no other club in the NBA would negotiate with him. The players' salary levels were thus artificially fixed and depressed. Moreover, the players had no choice as to the location in which they would play; they were told where they would begin their careers and were thereafter subject to being uprooted from their homes, families and off-season business interests at the whim of the owners.

25. The competition afforded by the advent of the ABA in 1967 has created the potential for alleviating some of the restraints of trade imposed upon professional players set forth in COUNT ONE of the complaint. The restraints within the structure of the NBA still remain, but in the three years since the ABA came into being, competition between the two leagues for player talent has resulted in salutary effects for the plaintiff players, examples of which are legion.

26. While many of the NBA defendants have attempted to enforce the reserve clause (as defined in the complaint, ¶s 25-26) as a perpetual option or right of renewal, some courts have disagreed, and declared the option to be for one year only. (Indeed, even one NBA team has represented publicly that the reserve clause may represent only a one year option - see page 11 of the preliminary prospectus of the Baltimore Bullets Basketball Club, Inc., annexed hereto as Exhibit D.) Thus, some NBA players have played out or are now playing out such option period, and have signed to play for teams in the rival ABA. These players have escaped the fixed and artificially depressed salary levels of the NBA, and have been able to negotiate vastly increased salaries with the ABA clubs. For example, Zelmo Beaty, a former player for the NBA Atlanta Hawks team, was able to increase his annual salary by about five times when he signed to play for the Los Angeles team in the ABA starting next year. Other NBA players, such as Rick Barry, Dave Bing and Billy Cunningham, by signing to play in the ABA, have been able to obtain similar substantial increases in compensation from the ABA teams with which they signed.

27. The mere threat by some NBA players to play out their options and sign with ABA teams has led directly to sizeable increases in their compensation rates within the NBA. For example, the NBA salary of Earl Monroe jumped by about seven times this year and the salaries of

John Havlicek and Luke Jackson jumped by about five times this year, because these players let it be known they were willing to play in the rival ABA. Indeed, the compensation levels throughout the entire NBA have increased dramatically; had it not been for ABA competition none of these increases could have been negotiated for NBA players. The NBA teams agree:

> "The formation of the American Basketball Association * * * has resulted, and may continue to result, in greater competition and expense in the acquisition of new players and the retention of existing players* * *." (Exhibit D hereto at p. 3; see also pp. 11, 12 thereof.)

28. In addition to increased salaries, competition from the ABA has resulted in NBA players obtaining: (i) participation in the ownership or profits of NBA clubs or of the ABA clubs which they have joined, and (ii) lucrative off-season employment with, and fringe benefits from, their NBA employers or new ABA employers. No such financial benefits would have been possible but for ABA competition.

29. College players are now able to negotiate with two potential employers, instead of with only one. Competitive bidding has enabled them to command higher starting salaries, bonuses and other contractual benefits. Such financial benefits directly affect the established players as well, since their negotiating positions have been enhanced immeasurably because of the college players' ability now to negotiate. Established players under-

standably are not agreeable to playing for depressed salaries when unproven college players are able, because of competition, to obtain large salaries and bonuses. The club owners have acknowledged this economic fact of life, and accordingly have been compelled to increase compensation levels of the established players across-the-board.

30. Plaintiffs recognize that the financial benefits referred to in paragraphs 26-29 above are substantial, being due in part to the premium the rival ABA will pay to obtain a competitive foothold and the NBA will pay in competitive response thereto. Some of the present high salary rates and extensive fringe benefits, as in other competitive businesses, may attain different levels through operation of normal economic forces. But defendants are unwilling to rely upon these natural competitive developments. Instead, they rely on anti-competitive solutions - the impending merger and the non-competition agreement.

31. Competition from the ABA has aided the NBA players in several other ways. Since the advent of such competition, media coverage by television and newspapers has increased tremendously, and has caused attendance figures in the NBA to increase to all-time highs (e.g., the New York Knickerbockers will have played before well over 1,000,000 box-office patrons this season). Increased attendance means more income to the owners and potentially more to the players.

32. The eleven ABA teams provide approximately 132 positions for professional players that were not available prior to the advent of competition in 1967. As a consequence of such competition, NBA players, who in the future may be dropped by their NBA clubs, have an opportunity to earn a livelihood in basketball.

33. For all the above reasons, competition from the ABA has served partially to ameliorate the effects of the NBA's intra-league illegal agreements and practices. The NBA since 1967 has tried to drive the ABA out of business through predatory use of its monopoly power and thus end such competition. However, the NBA has failed to accomplish its aim to destroy the ABA. Now, it seeks to eliminate the competition represented by the ABA by merging the ABA out of existence and entering into a non-competition pact even before effectuation of such merger.

34. The sole purpose of the NBA in merging with the ABA and joining it in a non-competition agreement, is to eliminate the necessity of bidding competitively for the services of established and college players. Competition between the leagues just prior to their entry into the non-competition agreement was at its height--effectuation of defendants' plan and scheme will at once destroy that competition.

Irreparable Harm Is Being Caused By The Non-Competition Agreement And Will Be Caused By The Proposed Merger

35. The disappearance of competition from the ABA will cause vast, immediate and irreparable harm to the plaintiff players. Every benefit discussed above in paragraphs 26-32 will be swept away in a single blow. All the pre-ABA restraints on college and established players will return with greater effect than ever.

36. There will be no competitive league to serve as a spur to compensation rates and as a potential escape route from the NBA's restraints of trade. It will not matter whether the reserve clause is a one year or perpetual option, since no club under the new NBA umbrella will ever negotiate with another club's players.

37. Accordingly, the proposed merger will completely and irrevocably upset the status quo. The non-competition agreement has already begun to upset the status quo. The preliminary relief sought by plaintiffs seeks only to maintain the status quo until after a trial can be had on the merits. The plaintiffs are not at this juncture seeking any mandatory relief, as would be the case, for example, were they now seeking to be declared free to negotiate anywhere within the present structure of the NBA, i.e., to be declared "free agents" as sought in the recent baseball case, Flood v. Kuhn, et al., 70 Civ. 202 (S.D.N.Y. 1970).

38. The obvious harm to plaintiffs by reason of defendants' proposed acts will have immediate and irreparable impact. The established NBA players historically have negotiated their contracts between the end of one season (in May) and the start of training for the next season (approximately September 15). If the merger and non-competition agreement are not enjoined now, these players will have none of the advantages in negotiating next year's contracts they would have under the status quo. There will be no competition from any source for their services. This loss as to next year's contracts would be irremediable for that one year, and would be compounded for all time, as discussed below.

39. If the preliminary injunction is not granted, the players' negotiating powers will be reduced to what they were in pre-competitive d for as long as it takes to hear a plenary trial on the merits, plus appeals. This could take years--years that could never be made up for most, if not all, players. Basketball is a game for young men. The average playing career in the NBA is only six to seven years; many careers last only one or two years and injuries can end others at any time. Thus, plaintiff players have only a limited time to exploit their special skills and to enjoy the benefits of their present negotiating powers. Hence, to permit the defendants to upset the status quo would forever and irreparably destroy for many players their right to enjoy the fruits of comp tition.

40. Once the merger is consummated there will be a common, rather than separate, draft of college players. Unless the merger and non-competition agreement are enjoined now, college players will be forced in the future to negotiate with only one employer. They will never be able to reacquire the initial competitive negotiating position they now enjoy under the status quo.

41. Moreover, a preliminary injunction is the proper remedy here since, as will be set forth in the memorandum in support of this motion, there is some doubt whether the remedy of divestiture would be available to plaintiffs as private litigants to force dissolution either of an established common draft or the merger itself.

42. Even were divestiture legally possible in this case, that remedy would be unworkable, particularly after several years of merged operations. There would be no way to return to the present status quo by divestiture, nor would it compensate plaintiffs for the loss of the time it would take to achieve. Thus, how could the ABA be reassembled as a viable competitor, especially if (but irrespective of whether) any of the present ABA teams is eventually dropped by the terms of the merger? How could there be an unscrambling of common pension funds for the players or of other common obligations of the club owners? How could player "trades" or "sales" or

shifts in franchises that would never have taken place but for the merger be undone? How could players be compensated for the undue hardships to themselves and their families that such forced movements would engender?

43. Assuming arguendo that some of these problems are technically soluble, any solution will involve hardships to all parties which need not be faced, since the defendants can point to no loss they would suffer by maintenance of the status quo. Any claim that by not merging or continuing in a non-competition agreement defendants would suffer monetary loss, is the equivalent of a claim that they should be allowed to engage in and benefit by these per se violations of the antitrust laws.

44. As will be discussed in the memorandum in support of this motion, the merger and non-competition agreement are both per se violations of the Sherman Act according to established legal principles. There is no Supreme Court antitrust exemption for basketball, as there appears to be for baseball. There is no Congressional antitrust exemption for this merger, as there was for the merger of the two professional football leagues, much less any exemption for a non-competition pact prior to merger. There is, therefore, a great likelihood that plaintiffs will succeed at trial. Accordingly, the merger and non-competition agreement should now be enjoined so as to prevent the severe injury to the players described above.

45. Money damages could not be calculated, nor could any damages be adequate, which would compensate plaintiffs for all the substantial losses defendants' proposed upset of the status quo would cause.

46. I believe that the attorneys for the NBA are Proskauer, Rose, Goetz and Mendelsohn and the attorneys for the ABA are Regan Goldfarb Powell & Quinn. I do not know who the attorneys for the other defendants will be. The above attorneys for the NBA and ABA were telephoned yesterday and informed that plaintiffs were making application today for a temporary restraining order, and were served with a copy of this affidavit, the Complaint, and the proposed Order To Show Cause. It is respectfully requested that under all of the circumstances set forth herein, it would be appropriate to provide that service of the annexed Order To Show Cause and this affidavit be sufficient if made in the manner set forth therein.

WHEREFORE, it is respectfully requested that the temporary restraining order and preliminary injunction sought by plaintiffs should be granted.

Lawrence Fleisher

Lawrence Fleisher

Sworn to before me this
17th day of April, 1970

Notary Public

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

- against -

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

70 Civ. 1526

ORDER

This cause having come on to be heard by Order to Show Cause why the order of the Court dated May 4, 1970 should not be modified, and the Court, upon all proceedings heretofore had herein, and upon due deliberation, enters its order as follows:

The preliminary injunction order of the Court dated May 4, 1970 is modified, but only to the following extent:

(1) Representatives of defendant National Basketball Association and defendant American Basketball Association may meet for the purpose of discussing or negotiating for a merger, consolidation, acquisition or combination, without Congressional approval, of the two said basketball leagues or any of their member teams, provided, that any such merger, consolidation, acquisition or combination, and any agreement ~~[illegible]~~ with respect thereto, must deal specifically with and indicate the disposition of uniform player contracts, the common draft and the reserve clause, and further provided, that the conditions set forth below are satisfied.

(2) When such discussions or negotiations relate in any way to the rights, privileges and immunities of plaintiffs, including but not limited to uniform player contracts, the common

draft and the reserve clause, Lawrence Fleisher, general counsel of the National Basketball Players Association and/or the attorneys of record for the plaintiffs in this action shall be present, and no discussions or negotiations relating to such matters shall take place except in their presence. Any agreement with respect to such rights, privileges and immunities of plaintiffs, including but not limited to uniform player contracts, the common draft and the reserve clause, shall be submitted to and approved by this Court.

(3) Any agreement reached between the National Basketball Association and American Basketball Association, or any of their member teams, with respect to any merger, consolidation, acquisition or combination of the two said basketball leagues or any of their member teams, shall be submitted to this Court for approval prior to any implementation or effectuation thereof, and any such agreement shall expressly provide for, and be contingent upon, such approval.

Dated: New York, New York
August 3, 1973

Robert L. Carter
United States District Judge

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,	:	
Plaintiffs,	:	70 Civ. 1526
-against-	:	ORDER
NATIONAL BASKETBALL ASSOCIATION, et al.,	:	
Defendants.	:	

Upon application of plaintiffs herein, and upon due deliberation by the Court having heard the parties, it is hereby

ORDERED, that defendants, their agents, servants, employees, attorneys and all persons acting in concert with them are forbidden to communicate, orally or in writing, directly or indirectly (except through counsel for the plaintiffs) and as hereinafter set forth, with any potential or actual class member, whether or not a named plaintiff in this action, concerning any subject matter referred to in the complaint herein. The communications forbidden by this order include, but are not limited to (a) solicitation of class members to opt out of the class; (b) communications which may tend to misrepresent the status, purposes and effects of the class action and of any actual or potential court order herein, or which may create impressions tending, without cause, to reflect adversely on any party, potential class members, any counsel, this Court or the administration of justice; and (c) communications which may have the

purpose or effect of inducing or coercing any actual or potential class member to accept any settlement proposal in this action. The obligations and prohibitions of this order are not exclusive. All other ethical, legal and equitable obligations are not affected by this order, and

FURTHER ORDERED, that this order does not forbid communications in the regular course of business which do not have the effect of the communications prohibited hereby, and

FURTHER ORDERED, that this order does not forbid communication to any potential or actual class member of the contents of "Statement to be Read to Players on September 16, 1971" (Exhibit A attached hereto) or the letter from Edward S. Irish, Chairman of the NBA Negotiating Committee to Lawrence Fleisher, Esq., dated September 2, 1971 (Exhibit B attached hereto), and

FURTHER ORDERED, that service of this order upon the attorneys for defendant National Basketball Association shall suffice as notice hereof to the three member clubs thereof which came into existence subsequent to the issuance of this Court's prior preliminary injunction, dated May 4, 1970--namely the clubs representing Cleveland, Buffalo and Portland.

Dated: New York, New York
September 16, 1971

United States District Judge

Exhibit A

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STATEMENT TO BE READ TO PLAYERS ON SEPTEMBER 16, 1971

I have called this meeting because I thought you would be interested in knowing the status of the merger situation.

The Senate Antitrust and Monopoly Subcommittee will hold three days of hearings on the merger legislation in Washington commencing September 21.

Through its negotiating committee, the NBA on September 2 made a written five-point offer to Mr. Fleisher as the representative of the NBA Players' Association. The proposals in that offer relate to Article 22 of the NBA Uniform Player Contract, that is, the option clause.

I now read you the letter to Mr. Fleisher.

^ Read the letter

If you agree that this proposal and merger would be of benefit to basketball, including the players, you can show your support by letter or wire or by testifying.

Letters or wires should be addressed to Senator Philip A. Hart, Chairman, Subcommittee on Antitrust and Monopoly Legislation, Room 253, Old Senate Office Building, Washington, D.C. 20510.

Requests to testify should be made by calling Mr. Wilbur D. Sparks, Assistant Counsel, Subcommittee on Antitrust and Monopoly Legislation, United States Senate, Washington, D.C. 20510. Telephone: (202) 225-7476.

Exhibit B

National Basketball Association

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September 2, 1971

Lawrence Fleisher, Esq.
15 Columbus Circle, 6th floor
New York, N. Y.

Dear Mr. Fleisher:

By this letter, the National Basketball Association states in detail an offer embracing proposals heretofore made to the NBA Players Association through you as its representative, as clarified hereinafter. The proposals relate to Article 22 of the NBA Uniform player contract.

Preliminarily, permit me to advise you of a decision reached by the Board of Governors and independent of this offer. Subject to approval by the Players Association, which we assume will not be withheld, when a club exercises its option to renew an existing contract, the authority reserved therein by the club to reduce the compensation for the option year by as much as 25 percent will not be exercised. The compensation during the option year will remain the same as for the preceding season, and the provision in Article 22 permitting a reduction of up to 25 percent in compensation payable during the option year will be omitted from future player contracts.

Further permit me to advise you that it is the position of the NBA that Article 22 permits but a single exercise of an option to renew for one year, and that the contract if so renewed carries with it no further option to renew. NBA interprets Article 22 to mean that if a player plays out his option year, he is a free agent.

On behalf of NBA, I now set out the following five-point offer to the NBA Players Association:

1. The term of a rookie contract shall be for one year with an option in the club to renew the contract for a single additional year at no reduction in compensation unless the club and the player involved agree on a longer term.

2. No option provision will be included in future contracts with veterans. A veteran is a player whose rookie contract has expired.

3. The option provision will remain in existing contracts.

4. Until the player has played the last game (including the last playoff game, if applicable) of the last season covered by his contract (and the option year, if any), he may not negotiate, or discuss terms of employment, with any club other than his own employer. Before a

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free agent whose contract has expired signs with another club, the former club, by meeting the highest offer made to the player, shall have the right to retain such player and sign him to a new contract.

5. If a player who has become a free agent by reason of the expiration of his contract signs with another club, a limited compensation shall be paid by the signing club to the club to which the player was formerly under contract, such compensation to be determined under the following procedures and principles:

A. A three-member arbitration panel shall be established to which all such compensation cases shall be referred. The NBA Players Association and the Commissioner shall each select one member and the two members so selected shall select the third member, who shall chair the panel. In the event the third member is not agreed upon within 30 days, the third member shall be selected by the President of the American Arbitration Association. A vacancy in the panel shall be filled by the appropriate appointing authority.

B. In the determination of compensation, the following principles shall govern:

1. Impact of the transfer of the player upon the attendance and revenues from all sources of the club to which the player involved was under contract (the former club).

2. Impact of the transfer of the player upon the competitive ability of the former club.

3. Evidence of any special costs incurred by the former club, such as unusual and exceptional promotion activities designed to enhance the value of the player to the club.

4. The arbitrators shall not consider the difference between the level of contract payments to the player by the former club and the level of contract payments to be paid him by the club with which he has signed.

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5. The arbitrators shall not award compensation so substantial as materially to discourage the movement of players from one club to another.

C. A compensation award by the arbitration panel, arrived at by the application of the foregoing principles, may be in the form of money, draft choices, assignment of player contracts, or any combination thereof as the decision specifies.

D. A decision of a majority (two) of the arbitrators shall constitute the decision of the arbitration panel. However, in the event a majority of the arbitrators are unable to agree, the determination of the neutral arbitrator shall constitute the arbitration decision.

E. The expenses of each case shall be borne equally by the two clubs.

The arbitration plan is designed to help maintain balanced competition among highly motivated and skilled teams. Balanced competition is the single, most important element in fan appeal. Without a widespread public demand for the sport, there can be neither clubs nor players. Conditions reasonably designed to foster balanced competition are, therefore, the legitimate concern of the general public as well as the clubs and the players.

The arbitration plan is important to balanced competition. Its aim is to provide a reasonable measure of compensation for the loss suffered by a club and by its remaining players and by its fans, if top stars sign with another club. But the arbitration plan does not seek that aim at the expense of a player's right, upon the expiration of his contract, to bargain freely for benefits commensurate with his ability. It bans the award of compensation to the former club at a level so high as to discourage the movement of players; and it excludes market value as an element of that award. It is, therefore, a reasonable step toward maintaining basketball as America's most widespread, major professional team sport.

I need not emphasize something that both you and the members of the Players Association know, namely, the importance which NBA places on a merger of the two leagues. That and the draft are necessary elements to the preservation and growth of professional basketball as a highly competitive fan-oriented sport. Important also is the arbitration plan. Without these elements the public, the players and the owners will ultimately suffer by a weakening of the attractiveness of the sport. We, therefore, urge the Players Association to consider this offer in the serious spirit in which it

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is tendered. While we hope to pursue this offer with you at once, there can, of course, be no final agreement until we know the direction in which Congress is moving on the merger issue.

I am prepared immediately to discuss each element of this offer further with you.

May I have your early response.

Sincerely yours,

Edward S. Kirk

Chairman
NBA Negotiating Committee

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,
Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,
Defendants.

70 CIV. 1526

MEMORANDUM

TENNEY, J.

This case is before the Court on plaintiffs' motion to hold defendants in contempt of this Court's order of May 4, 1970, prohibiting defendants from inhibiting competition for player talent between the member teams of the National Basketball Association (hereinafter "NBA") and the member teams of the American Basketball Association (hereinafter "ABA"). For the reasons set out infra the motion is denied.

Briefly, the events culminating in the present motion are as follows: On April 17, 1970, professional basketball players under contract to the member teams of defendant NBA brought suit to enjoin the contemplated merger of the NBA and the ABA, charging that such a merger would be in violation of the antitrust laws and that the merger negotiations themselves were effectively eliminating competition between the leagues for plaintiffs' services. On the same date, Judge Macklahen

issued a temporary restraining order prohibiting the merger. This Court, on May 4, 1970, issued a preliminary injunction which, in pertinent part,

> "1....enjoined [defendants]:
> (a) from reaching agreement on, effectuating or consummating any merger, consolidation, acquisition or combination by any means between defendant [NBA] and defendant [ABA] or any of their member teams;
> (b) from entering into, implementing or carrying out any form of an express or implied non-competition agreement pending any such formal merger...whereby no club in one league will attempt to employ, bid for or negotiate with any player from the other league;
> (c) from refusing in any way to attempt to employ, bid for or negotiate with any player on the ground that the player is from another league, or by reason of any such agreement or understanding, express or implied, as is referred to in paragraph (b) above."

The order, however, recognizing defendants' constitutional right to petition Congress, expressly provides that nothing contained therein would prohibit defendants from

> "2....
> (a) meeting among themselves or with others to discuss, negotiate and jointly agree upon a proposal of merger, consolidation, acquisition or combination between the NBA and ABA or any of their member teams solely for the purpose of petitioning Congress for:
> (i) an exemption from the antitrust laws with respect to such proposal, or
> (ii) related legislation with respect to such proposal, or
> (iii) carrying on their regular course of business."

BEST COPY AVAILABLE

Plaintiffs contend that two actions taken by defendants violate the order and, thus, render them in contempt of this Court. First, plaintiffs allege that on May 7, 1971, defendants NBA and ABA entered into a signed, formal agreement of merger in direct contravention of paragraph 1(a) of the order. Secondly, plaintiffs allege that a resolution of the NBA Board of Governors, approved on March 23, 1972, which prohibits the Commissioner from approving the NBA contract of any player "if there is knowledge that there exists an adverse claimant to the contractual rights to the services of [that] player, until there has been a final judicial determination of such rights," violated paragraphs 1(b) and (c) of the order.

THE MAY 7, 1971 AGREEMENT

This agreement was executed by the Commissioner of the NBA, twelve out of seventeen member terms of the NBA, the Commissioner of the ABA, and ten out of eleven member terms of the ABA. Although plaintiffs specifically note paragraphs 5(b), 6 and 8 as being violative of the injunction, this Court has reviewed the entire document for contemptuous content.

It is clear that paragraphs 1, 2, 3, 4, 7, 9, 10, 11 and 12 are in conformance with the order. Paragraphs 2, 3 and 4 create a merger committee whose purpose is to hire counsel, present proposed legislation to Congress, and to

conduct such settlement negotiations as may be held with the instant plaintiffs. Paragraph 7 binds the signatories to employ their best efforts to procure exempting legislation. The remaining paragraphs enumerated supra are merely procedural in nature and concern such items as definitions, method of execution, applicable law, etc.

Plaintiffs contend that paragraphs 6 and 8 indicate an intent to effect a merger prior to obtaining Congressional consent. This claim is without merit. Paragraph 6 is, in effect, a voluntary discontinuance of a treble damage antitrust suit filed by the ABA against the NBA and its member teams subsequent to the promulgation of the order of this Court and occasioned by the defection of Charlie Scott and Jim Hollenbeck to the NBA while still under contract to ABA teams. There is nothing in this Court's order, and nothing in the antitrust laws, which compel the continuance of such litigation in the name of competition. Paragraph 8 of the agreement imposes liquidated damages in the amount of $3,000,000 upon any signatory to the agreement who fails to exert its best effort to secure exempting legislation. It is clear to this Court that this provision is nothing more than an attempt to insure the full cooperation of all parties in an undertaking which is in compliance with paragraph 2 of this Court's order.

The most serious objection is taken with respect to paragraph 5 of the agreement, entitled "Plan". This paragraph, and its subsections, set out a rather detailed merger plan including, inter alia, agreements as to (1) territories to be allocated to teams in the new merged league, (2) indemnification payments to be made to NBA teams, (3) sharing of television proceeds, (4) scheduling of games, (5) a common draft, etc. Plaintiffs specifically claim that subsection 5(1), which prohibits player transactions between the leagues for a period of one year from the date of the exempting legislation, violates paragraph 1(a) of the order. The operation of subsection 5(1), however, is conditioned upon, as are all of the other subsections of paragraph 5, securing congressional exemption from the antitrust laws, and thus cannot be considered as a presently effective merger agreement. At the original hearing on the motion for a preliminary injunction, defendants informed the Court of their need to present Congress with a comprehensible plan of merger to facilitate the securing of exempting legislation. This need was recognized by the Court in paragraph 2 of the May 4, 1970 order and, although the Court did not expressly contemplate a formal signed agreement and feels that it should have been consulted as to the propriety of such an agreement under the order, it appears that the merger plan

is entirely prospective and does not violate the spirit of that order.

THE MARCH 23, 1972 RESOLUTION

On March 23, 1972, the NBA Board of Governors (consisting of a representative from each member team) adopted the following resolution:

> "[T]hat the Commissioner may not approve any contract if there is knowledge that there exists an adverse claimant to the contractual rights to the services of a player, until there has been a final judicial determination of such rights."

Paragraphs 1(b) and (c) of the order, in essence, prohibit defendants from entering into an agreement not to, or refusing to attempt to, employ or negotiate with any player from another league. Plaintiffs contend that the resolution violates both paragraphs.

Plaintiffs claim that the effect of the resolution is to discourage, if not prevent, NBA teams from competing for the services of ABA players. They argue that the resolution instructs the Commissioner not to approve the NBA contract of a player if someone, presumably an ABA team, asserts an adverse claim to his services, no matter how frivolous the claim may be. Thus, all that an ABA team need do to prevent a player from defecting to the rival NBA is to file a complaint; a rather simple and inexpensive matter. Then, since the resolution prohibits approval of the contract until final adjudication of the claim, the player can be

prevented from switching leagues almost indefinitely. Consequently, since the average player's playing "lifetime" is only six years, no NBA club will take the chance of signing or even negotiating with an ABA player who might not play for their team until he is past his prime, if he plays at all. As evidence of this effect, plaintiffs claim that not one ABA player has been signed by an NBA team since promulgation of the resolution.

Defendants first note that plaintiffs, as NBA players, would not be affected by the resolution even if their accusations were true. It would appear that defendants are thus challenging plaintiffs' standing to contest the resolution. The Court does not agree. To fully evaluate the impact of the resolution it is necessary to consider it in the context of NBA-ABA relations.

The essence of that relationship in recent years has been a mutual attempt to eliminate the costly competition for player talent which resulted from the creation of the ABA. The purpose of this Court's order was to restore the state of competition required by the antitrust laws which had been diminished by defendants' merger negotiations. In February and March 1972, the Kentucky Supersonics and the Pittsburgh Suns, both NBA member teams, signed Charlie Scott and Jim McDaniels, respectively, while both were still under contract to ABA teams. Plaintiffs claim that this was the only competition between the leagues since the signing of

the May 7, 1971 agreement. Soon after the signings, the ABA filed a treble damage antitrust suit against the Suns and the Sonics, naming the NBA and its other member teams as co-conspirators. Almost immediately after commencement of the suit, the resolution was adopted and NBA Commissioner Kennedy stated that "[i]f we didn't pass this policy there would just be greater defection on both sides. This is a sincere effort to stop something that is rapidly getting out of hand." N.Y. Daily News, March 24, 1972 at 10. Furthermore, ABA Commissioner Dolph, in response to the resolution, said "[t]hey've come up with a very progressive attitude. Maybe we'll be able to settle all this after all, between ourselves, and not have to do it in the courts." N.Y. Daily News, March 24, 1972 at 10.

It is possible to infer from these circumstances and statements that the leagues have entered into an implied agreement not to compete for each other's player talent. If this were indeed the case, then NBA players, as well as ABA players, would be affected by the resolution. It is plaintiffs' position that this is exactly what has happened: that defendants have achieved by indirect means that which they could not do by direct agreement under the order.

Defendants most vehemently deny these allegations. In their affidavits and supporting papers they cite to, *inter alia*, the vigorous competition between the leagues for "rookie" talent in their respective college draft (which is the largest

source of new playing talent for all teams); they point out that the resolution will not, and has not prevented the signing of players while still under contract in another league as long as his services do not commence until the expiration of his present contract; they assert that the AHA knew nothing of the resolution prior to public release; they assert that the resolution is a perfectly legitimate means to avoid actions for inducing breach of contract and contend that that is its only purpose. In short, they insist that plaintiffs' allegations are nothing more than the sheerest speculation.

The Court will not detail all of defendants' responses since plaintiff has failed to sustain its burden of proving defendants' contempt by clear and convincing evidence. Hart Schaffner & Marx v. Alexander's Dept. Stores, 341 F.2d 101, (2d Cir. 1965). While plaintiffs' allegations are more than mere speculation, and would most likely survive a motion to dismiss, they have failed to substantiate these allegations. At oral argument, plaintiffs' counsel stated "[w]e would be very happy to bring in fifty players to testify to their inability to get a job or contract from another team." (Hearing Tr. at 65.) In all of their supporting papers and affidavits they have failed to name even one. Therefore, plaintiffs' motion is denied.

In so holding, defendants are put on notice that the Court recognizes that the resolution may be applied in a non-competitive manner and that, in the future, the Court will examine with great care any evidence of such application.

So ordered.

Dated: New York, N. Y.
March 12, 1973.

CHARLES H. TENNEY
U.S.D.J.

48

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

- -x

70 Civ. 1526

ORDER

This cause having come on to be heard by plaintiffs' motion for a preliminary injunction, the Court, upon the complaint and affidavits of Lawrence Fleisher and Peter Gruenberger, Esqs., and upon due deliberation, hereby enters its order as follows:

1. Pending the hearing and trial of this action defendants, their agents, servants, employees, attorneys and all persons acting in concert with them, are enjoined:

(a) from reaching agreement on, effectuating or consummating any merger, consolidation, acquisition or combination by any means between defendant National Basketball Association ("NBA") and defendant American Basketball Association ("ABA") or any of their member teams;

(b) from entering into, implementing or carrying out any form of an express or implied non-competition agreement pending any such

formal merger, consolidation, acquisition or combination, whereby no club in one league will attempt to employ, bid for or negotiate with any player from the other league;

(c) from refusing in any way to attempt to employ, bid for or negotiate with any player on the ground that the player is from another league, or by reason of any such agreement or understanding, express or implied, as is referred to in paragraph (b) above. While in any proceeding alleging a violation of this paragraph (c) the ultimate burden of proof shall remain upon plaintiffs, the person or persons so charged shall have the burden of going forward with evidence that any such refusal was not by virtue of anything prohibited by this paragraph (c);

(d) from holding or agreeing to hold a common draft of college players; allocating or agreeing to allocate any players, except with respect to intra-league college, expansion or supplemental drafts and intra-league player contract assignments; or fixing a schedule for or playing any games (except pre-season games) between teams of either league; and

(e) from taking any further steps to effectuate or consummate any of the acts prohibited in paragraphs (a)-(d), above.

2. Nothing contained in this order shall be deemed to prohibit or prevent defendants, their agents, servants, employees, attorneys and all persons acting in concert with them from associating together for the purpose of petitioning or soliciting Congress to enact legislation with respect to or concerning any merger, consolidation, acquisition, or combination between the NBA and the ABA or any of their member teams. In particular, defendants, their agents, servants, employees, attorneys and all persons acting in concert with them shall not be prohibited from:

(a) meeting among themselves or with others to discuss, negotiate and jointly agree upon a proposal of merger, consolidation, acquisition or combination between the NBA and ABA or any of their member teams solely for the purpose of petitioning Congress for:

(i) an exemption from the antitrust laws with respect to such proposal, or

(ii) related legislation with respect to such proposal; or

(b) carrying on their regular course of business.

Dated: New York, New York
May 4, 1970

Charles H. Tenney
United States District Judge

DX 51

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

ORDER TO SHOW CAUSE

70 Civ. 1526 RLC

Preliminary Injunction And Temporary Restraining Order

Upon the annexed affidavit of George G. Gallantz, sworn to the 15th day of February 1974, the certificate dated February 15, 1974 of Michael A. Cardozo, pursuant to Rule 65 of the Federal Rules of Civil Procedure, the complaint filed by American Basketball Association and others in the United States District Court for the Northern District of California in an action entitled American Basketball Association, et al. v. National Basketball Association, et al. (74 Civ. 0232), and all the prior proceedings had in this action, including the filing of the complaint, the preliminary injunction issued by this Court dated May 4, 1970, plaintiffs' motion to punish defendants for contempt and the order of March 12, 1973 denying that motion, and after hearing the attorneys for the parties herein, and sufficient cause appearing therefor, it is hereby

ORDERED, that defendant American Basketball Association show cause before this Court, on February 19 1974, at 10 A M., or as soon thereafter as counsel can be

heard, in Room 109, United States Courthouse, Foley Square, New York, New York, why this Court should not enter an order, pursuant to Rule 65 of the Federal Rules of Civil Procedure, and the inherent powers of the federal courts, granting defendant National Basketball Association and its member teams a preliminary injunction enjoining and restraining defendant American Basketball Association, its member teams, their respective agents and attorneys and all persons acting in concert with them, from prosecuting in any manner the aforesaid action in the United States District Court for the Northern District of California.

AND, it further appearing to this Court from the annexed affidavit of George G. Gallantz that immediate, substantial and irreparable injury to defendant National Basketball Association and its members may occur, and this Court's jurisdiction may be undermined, if defendant American Basketball Association, its member teams, their respective agents and attorneys and all persons acting in concert with them are permitted to continue to prosecute the aforesaid California action before a decision on this application for a preliminary injunction is made, and after hearing oral argument on the application for a temporary restraining order by the attorneys for the parties herein, and upon the moving defendants posting security as fixed by this Court in the sum of $ 5,000 conditioned as required by law, it is further

ORDERED, that pending the hearing and determination of the moving defendants' motion for a preliminary injunction, defendant American Basketball Association, its member teams, their respective agents and attorneys and all persons acting in concert with them, are hereby temporarily restrained

from taking any steps in connection with, or prosecuting, the action in the United States District Court for the Northern District of California entitled American Basketball Association, et al. v. National Basketball Association, et al., (74 Civ. 0232); and it is further

ORDERED, that service of this order to show cause together with copies of the papers upon which it is made be deemed good and sufficient service if made by hand delivery as follows on or before 5:30 P.M. on February 14, 1974.

(a) On defendant American Basketball Association, by serving a copy of the same on its attorneys, Roth, Carlson & Spengler, 280 Park Avenue, New York, N. Y.;

(b) On plaintiffs, by serving a copy of the same on their attorneys, Weil, Gotshal & Manges, 767 Fifth Avenue, New York, N. Y.;

(c) On defendants Madison Square Garden Center, Inc. Madison Square Garden Corporation and Ned Irish, by serving a copy of the same on their attorneys, Simpson Thacher & Bartlett, 1 Battery Park Plaza, New York, N. Y.; and

(d) On defendant Phoenix Professional Basketball Club, by serving a copy of the same on its attorneys, Baer & McGoldrick, 345 Park Avenue, New York, N. Y.

S/ Robert L. Carter
U.S.D.J.

Issued at 5:30 P.M. on
February 15, 1974,
at New York, N. Y.

5:4

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- -x

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

- -x

CERTIFICATE

70 Civ. 1526 RLC

MICHAEL A. CARDOZO, an attorney associated with Proskauer Rose Goetz & Mendelsohn, the attorneys for all the defendants herein other than defendants American Basketball Association, Madison Square Garden Center, Inc., Madison Square Garden Corporation, Ned Irish and Phoenix Professional Basketball Club, hereby certifies pursuant to Rule 65 of the Federal Rules of Civil Procedure, that on February 14, 1974, between 2:15 P.M. and 2:45 P.M., he telephoned the offices of the attorneys listed below and advised each such office that on February 15, 1974, at approximately 5:00 P.M., the defendants represented by Proskauer Rose Goetz & Mendelsohn would appear before this Court to request the issuance of a temporary restraining order herein:

(a) Robert S. Carlson, Esq. of Roth, Carlson & Spengler, attorneys for defendant American Basketball Association;

(b) Peter Gruenberger, Esq. of Weil, Gotshal & Manges, attorneys for plaintiffs;

(c) Roy L. Reardon, Esq. of Simpson Thacher & Bartlett, attorneys for Madison Square Garden Center, Inc.;

Madison Square Garden Corporation and Ned Irish; and

(d) Thomas Baer, Esq. of Baer & McGoldrick, attorneys for defendant Phoenix Professional Basketball Club.

Dated: New York, New York
February 15, 1974.

Michael A. Cardozo

Michael A. Cardozo

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

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70 Civ. 1526 RLC

AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

GEORGE G. CALLANTZ, being duly sworn, deposes and says:

1. I am a member of Proskauer Rose Goetz & Mendelsohn, attorneys in this action for defendant National Basketball Association (hereafter the "NBA") and for all but two of its member teams. I make this affidavit in support of our clients' motion to temporarily restrain and preliminarily enjoin the defendant American Basketball Association (the "ABA") and its members from prosecuting the action, described in the following paragraphs, which was recently filed in the United States District Court for the Northern District of California.

2. On January 30, 1974, the ABA caused to be filed in that court a complaint, a copy of which is annexed hereto as Exhibit A, and which will be more fully described later in this affidavit. The primary relief prayed for in that complaint is, in effect, a decree enjoining the NBA from competing with the ABA. The decree sought would, for

example, enjoin any NBA team, for a period of four years, from entering into a contract with any basketball player now attending school or college, and from ever enforcing any contract with any player for a period of more than a year (Exhibit A, pp. 34-35). In short, the ABA, by this new action, seeks to eliminate the NBA as a competitor for the services of both new and veteran players.

3. In addition, the California complaint appears to seek an award of treble damages for the alleged wrong said to have been done to the ABA and its members when NBA teams entered into contracts with players who had previously played for ABA teams. As will be shown below, those contracts were previously held by Judge Tenney of this Court to be evidence of lawful conduct by the NBA, consistent with an outstanding injunction order entered in this action in 1970.

4. The complaints in both the California action and in the instant one allege that the NBA is trying to destroy the ABA through unlawful means. Plaintiffs here, like the ABA in the California action, attack the validity of what they call the "reserve" clause. The preliminary injunction, issued by this Court on May 4, 1970, and still in force, prohibits the two leagues from allocating college players between themselves, a result that would in part be achieved if, as is sought in the California action, an injunction is issued prohibiting the NBA from signing any college players. In a contempt proceeding in this action plaintiffs once charged that the two leagues were not competing adequately, alleging that the only competition between the leagues had occurred in the signing by NBA teams of two

players whose very signing is pointed to in the California action as evidence of the NBA's wrongful conduct.

5, In sum, the very business practices challenged in this Court, including practices regulated by this Court's preliminary injunction, have now become the subject of a second suit, brought in a different district, by one of the parties to this action.

THE PRIOR PROCEEDINGS IN THIS ACTION

The Parties

6. The complaint in this action (a copy of which is annexed hereto as Exhibit B), filed on April 16, 1970, names as plaintiffs a number of NBA players. Plaintiffs purport to bring the action "individually and as representatives of all present and future active players in the National Basketball Association."

7. The defendants are the NBA, fourteen of its past or present members, one member of its Board of Governors and the ABA.

The Allegations of the Complaint

8. The complaint alleges that the defendants have and are engaged in a variety of activities said to violate both the Sherman Act and the antitrust and common laws of several states.

9. With respect to the NBA defendants, the complaint alleges that the terms and conditions under which players are employed violate the antitrust laws by eliminating competition in the "acquisition, allocation and employ-

ment of the services of professional basketball players." It is alleged (and denied by the NBA defendants) that this is accomplished by:

a) seeking to compel all players to deal with NBA clubs only on uniform terms and conditions and to execute the NBA Uniform Player Contract and none other;

b) enforcing NBA rules and regulations so that the right to negotiate with and sign a player is accorded "perpetually" to the NBA team that "drafts" such player in the "college draft" conducted by NBA teams in the spring of each year;

c) refraining from employing or negotiating with any player who was under contract with another NBA club and by "boycotting, blacklisting or otherwise penalizing" any NBA club which contracts or negotiates with any player who is under contract with another NBA club or is under what the complaint describes as "reserve" to another club;

d) dealing in such a way as to make the alleged "reserve" clause perpetual even if it is, by its terms, only a one year option on the services of the players covered thereby.

10. With respect to all defendants including defendant ABA, the complaint alleges that:

a) the NBA defendants have combined and conspired to use "predatory practices to destroy the defendant ABA," that all such attempts have failed, and that the ABA "is beginning to flourish as an independent rival league";

b) having failed to destroy the ABA, defendants NBA and its members are conspiring to effect a "merger" of the two leagues with the purpose and effect of eliminating the ABA as the independent competitive force which plaintiffs allege it has been; and

c) in furtherance of the agreement to effect a merger, the "NBA defendants have entered into a non-competition agreement between the leagues and their respective clubs, pending effectuation of the merger, and are engaged in secret negotiations with the ABA to effectuate an imminent merger of the two leagues."

The Relief Requested in the Complaint

11. In addition to requesting a determination that the acts complained of are unlawful, the complaint seeks an unspecified amount of money damages, attorneys' fees and:

a) an injunction against the NBA defendants "prevent[ing] plaintiff players

from freely negotiating with any professional basketball club of their choice at the end of their current contracts, without giving effect to any alleged option or renewal right contained in the 'reserve' clause"; and

b) an injunction against defendants' taking any steps in furtherance of an attempt to effectuate or consummate any "non-competition agreement, merger, consolidation, acquisition or combination" between the NBA and the ABA, and their member clubs.

12. The answers of the defendants deny the essential allegations of the complaint and assert various affirmative defenses, including the defense that all terms and conditions of NBA players' employment, including the uniform player contract, have been and are properly a subject for collective bargaining between the NBA and the players' representative.

The Temporary Restraining Order

13. By order to show cause dated April 17, 1970, this Court (MacMahon, J.) temporarily restrained all defendants from taking any steps in furtherance of an attempt to effectuate or consummate by any means a "merger, consolidation, acquisition, combination or non-competition agreement."

The Preliminary Injunction

14. On May 4, 1970, a preliminary injunction, a copy of which is annexed hereto as Exhibit C, was issued

by this Court (Tenney, J.), upon consent of all defendants including the ABA.* That injunction prohibited defendants NBA and ABA and their member teams from, among other things:

a) agreeing on or consummating a merger;

b) agreeing, expressly or impliedly, that no club in one league would refrain from attempting to employ, bid or negotiate with any player from the other league;

c) refusing in any way to attempt to employ, bid or negotiate with a player on the ground that the player was from the other league;

d) holding or agreeing to hold a "common draft [i.e., a single draft participated in jointly by both leagues] of college players;" or

e) scheduling or playing regular season games between NBA and ABA teams.

15. The preliminary injunction also provided that it was permissible for the defendants to meet among themselves for the purpose of agreeing upon a proposal of merger so that they could petition Congress for:

a) an exemption from the antitrust laws with respect to such merger proposal; or

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* A supplemental order, dealing with the circumstances under which defendants could discuss the subject of merger with the players, was entered on September 16, 1971.

b) related legislation with respect to such merger proposal.

Plaintiffs' Motion For Contempt

16. By order to show cause dated April 10, 1972, plaintiffs moved this Court to adjudge defendants in contempt by reason of their alleged violation of the preliminary injunction entered on May 4, 1970. The provisions of the preliminary injunction which defendants were alleged to have violated were the prohibition against defendants' "entering into, implementing or carrying out any form of an expressed or implied non-competition agreement . . . whereby no club in one league will attempt to employ, bid or negotiate with any player from the other league" (Exhibit C, ¶1[b]), and "refusing in any way to attempt to employ, bid for or negotiate with any player on the ground that the player is from another league . . . ." (Exhibit C, ¶1[c]).

17. In the moving affidavit on that motion, it was alleged that defendants had agreed to "restrain competition for players' services in a manner that directly contravene[d]" the preliminary injunction, by virtue of:

a) the approval, by the NBA Board of Governors on March 23, 1972, of a resolution instructing the NBA Commissioner not to approve any player contract, if there is knowledge that there exists an adverse claimant to the contractual rights of the player, until there has been a final judicial determination of such rights; and

b) an agreement in writing entered into

by the two leagues (a copy of which is annexed hereto as Exhibit D), containing a proposal of merger to take effect upon passage of exempting legislation which, by the agreement, the parties agreed to seek from Congress.

18. The moving affidavit alleged that the NBA Board of Governors' resolution of March 23, 1972 had been passed as an anti-competitive response to the signing of two ABA players (Charlie Scott and Jim McDaniels) by NBA clubs, which signing plaintiffs decried as "the only competitive activity (albeit limited) between the ABA and NBA which has taken place since May 7, 1971" (the date of the merger agreement), and "isolated examples of the kind of competitive activity mandated by Judge Tenney's order."

19. Plaintiffs alleged, moreover, that a lawsuit commenced by the ABA against the NBA and the two NBA clubs responsible for the Scott and McDaniels signings was a "warning" by the ABA that NBA clubs would be penalized for engaging in the competition for players' services that had been mandated by the preliminary injunction. (The NBA was never served with process in that lawsuit.)

The Decision Denying Plaintiffs' Motion to Adjudge Defendants in Contempt

20. On March 12, 1973, this Court denied plaintiffs' contempt motion in a memorandum, a copy of which is annexed hereto as Exhibit E. With respect to the charge that the merger agreement violated the injunction, Judge Tenney stated that "it appears that the merger plan is entirely

prospective" and could not, therefore, "be considered as a presently effective merger agreement."

21. In rejecting the claim that the resolution of March 23, 1972 reflected an agreement not to compete in violation of the injunction, Judge Tenney detailed the background of the injunction and some of the arguments of the parties. "The purpose of this Court's order," he noted, "was to restore the state of competition required by the antitrust laws which had been diminished by defendants' merger negotiations." He noted the signings of Scott and McDaniels by NBA teams - apparently as examples of such competition - and commented on the possible inference, from the subsequent resolution of March 23, 1972 and statements attributed to officials of both leagues, that the parties had an implied agreement not to compete. However, he took note of defendants' denials that the resolution was such an implied agreement, and their sworn statements that there was "vigorous competition between the leagues for 'rookie' talent in their respective college drafts (which is the largest source of new playing talent for all teams)."

22. Without detailing all the factual assertions of defendants in opposition to the motion, Judge Tenney concluded that plaintiffs had failed to sustain their burden of proving defendants' contempt "by clear and convincing evidence." However, he took care to emphasize the Court's intention to insure vigorous competition between the leagues.

> "In so holding defendants are put on notice that the Court recognizes that the resolution may be applied in a non-competitive manner and that, in the future, the Court will examine with great care any evidence of such application."

The Modification of the Preliminary Injunction

23. By order dated August 3, 1973, a copy of which is annexed hereto as Exhibit F, this Court (Carter, J.), upon application of the ABA, modified the preliminary injunction to permit representatives of the NBA and ABA to meet for the purposes of discussing or negotiating for a merger without Congressional approval. The modification, however, specifically provided that any agreement which might be reached "must deal specifically with and indicate the disposition of uniform player contracts, the common draft and the reserve clause." All other provisions of the preliminary injunction were to remain in effect.

24. The modification order also provided that any agreement reached as a result of discussions permitted under it had to be approved by the Court and that "when such discussions relate[d] in any way to the rights, privileges and immunities of plaintiffs, including, but not limited to uniform player contracts, the common draft and the reserve clause", the general counsel of the NBA Players Association or plaintiffs' attorney of record "shall be present."

The Conferences of February 5 and 8, 1974

25. At a conference with the Court held on February 5, 1974, counsel for plaintiffs stated, as we understand it, that in view of Congress' failure to pass legislation permitting the two leagues to merge, plaintiffs intended to prosecute this action vigorously, including the complaint's charge that the NBA "reserve" clause was illegal. Time schedules for various motions were set and plaintiffs'

counsel indicated that he intended to commence discovery proceedings.

26. On February 8, 1974, in a second conference with the Court convened at the request of the ABA, the ramifications of the outstanding injunction orders of this Court were discussed, and the Court orally clarified the limits intended to be imposed on the leagues if they wished to discuss the subject of merger.

THE COMPLAINT IN THE CALIFORNIA ACTION

27. On January 30, 1974, without seeking leave of this Court, defendant ABA and nine of its ten members filed, in the United States District Court for the Northern District of California, the complaint annexed hereto as Exhibit A, naming as defendants the NBA and its members. The plaintiffs in the instant action - the NBA players - were not named as parties. To the best of my knowledge, as of today, only two of the defendants in the California action (Lemat Corporation and California Sports, Incorporated) have thus far been served.

28. The forty-page complaint in the California action must be read in its entirety to appreciate fully the intensity of its assault, however unwitting, on the jurisdiction of this Court. The California complaint attempts to secure relief irreconcilable with the orders of this Court and the relief sought in this action, and puts before a second Federal Court issues and allegations which are inextricably entwined with those in this four-year-old action. The following is illustrative of that assault:

a) The complaint in this action (Exhibit B) alleges that "beginning at least as early as 1946

. . . and continuing until the date of the filing of this complaint, the defendants have engaged in an unlawful combination or conspiracy to monopolize . . . in professional major league basketball." (New York complaint ¶32). In practically identical terms the California complaint alleges that "beginning in about the year 1949 . . . and continuing up to and including the date of the filing of this complaint, the defendants . . . have been and are now engaged in . . . a combination and conspiracy to monopolize . . . professional basketball." (California complaint ¶12(b)).

b) The complaint in this action alleges that "the defendants have unlawfully combined or conspired to preserve their monopoly position . . . by using diverse predatory practices to destroy the ABA." (New York complaint ¶44). Similarly, the California complaint alleges that "it was the intent . . . of defendants . . . to . . . eliminate plaintiffs from . . . professional basketball." (California complaint ¶13 (i)).

c) The preliminary injunction here mandates competition between the two leagues and forbids non-competition; the California action seeks to enjoin competition between the ABA and the NBA -- by prohibiting the NBA (i) from competing at all for new players until 1978, and (ii) from offering contracts to present players on terms competitive with the ABA insofar as multi-year provisions are

concerned. (California complaint pp. 34-35). In effect, the ABA seeks to have the injunction of this Court nullified in the California action.

d) The California action accuses the NBA and its members of "'raid[ing]' ABA teams and sign[ing] players already under contract to ABA member teams." (California complaint ¶54). Among the specific actions complained of are the signings of McDaniels and Scott. (Complaint ¶¶56, 57). Yet the preliminary injunction of this Court enjoins all the defendants, including the NBA and its members, "from refusing . . . to employ, bid for or negotiate with any player on the ground that the player is from another league." In fact, plaintiffs here predicated their contempt motion upon an alleged implicit agreement between the ABA and the NBA to refrain from signing players under contract with each other, and pointed to the McDaniels and Scott signings as the "only" bona fide competition between the leagues. Thus, the California action seeks damages for the very competition mandated by this Court's order.

e) In denying the contempt motion Judge Tenney put the NBA on notice that this Court would carefully scrutinize its activities to ensure that the resolution of March 23, 1972 was not being applied in an anti-competitive fashion; the complaint in the California action (¶58) assertes the illegality to an alleged recent offer by the NBA's

Philadelphia team to an ABA player.

f) This Court's preliminary injunction prohibited the defendants "from holding or agreeing to hold a common draft of college players" and the modification of that injunction emphasized that any merger agreement would have to deal specifically with the "common draft". The California action would simply eliminate the "common draft" problem for four years by prohibiting NBA member teams from signing college players. (California complaint p. 34).

g) Although we intend, at the proper time, to oppose the plaintiffs' class definitions, the class alleged to be represented by plaintiffs is asserted to include "future" NBA players (New York complaint ¶10); the California action would reduce that class to second class citizenship, at least for the next four years, by enjoining the NBA from contracting with it.

h) The complaint in this Court alleges the illegality of the "reserve" clause and seeks to enjoin its enforcement (New York complaint ¶¶21-28, 35; p. 23); the California complaint makes similar allegations and seeks similar relief. (California complaint ¶¶22(e), 52; p. 34).

30. The above are examples of the direct attack made by the California action on the jurisdiction of this Court. The collateral attack on this Court's ability to

adjudicate the issues before it and make appropriate rulings is perhaps less obvious, but no less pernicious. For example:

a) The NBA has entered into a three-year master collective bargaining agreement with plaintiffs' Players Association and into individual contracts with NBA players, using the Uniform Player Contract prescribed in and made a part of that collective bargaining agreement. The ABA would have the California court abrogate those agreements and contracts, and the rights and obligations of the parties thereunder -- without even naming the players as parties to the California action.

b) Even in its purported contract and fraud allegations, the California action relates to the parties and issues in this action. Thus, the breach of contract count in the California complaint alleges that defendants failed, in violation of the merger agreement, to use their "best efforts" to procure exemptive Congressional legislation for the proposed merger. That merger agreement was the one considered by this Court on the contempt motion. Moreover, plaintiffs here are themselves witnesses to the effort to obtain merger legislation, for we anticipate no dispute that they lobbied actively to defeat the legislation.

c) The evidence concerning count III of the ABA complaint in the California action - where it is alleged that the NBA and its members falsely represented that they would use their best efforts to secure passage of merger legislation - will inevitably include the very acts done by the NBA and its members in compliance with the preliminary injunction.

THE REQUESTED TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION SHOULD ISSUE

31. In our memorandum of law we will demonstrate, and we submit, that when a court's jurisdiction is threatened in the manner outlined above, the court should -- indeed must -- enjoin prosecution of the second action. Injunctive relief in the form requested is particularly appropriate here. The competitive practices of professional basketball have been the subject of the pending action in this Court for the last four years. Certain of the business practices of the parties are already being regulated by this Court's preliminary injunction. The potential chaos in professional basketball that would be created by concurrent trials and inconsistent decisions on the legality of the NBA's competitive practices in this and the California actions, and the serious due process questions that would be raised if the NBA were found liable in California for complying with this Court's preliminary injunction, mandate the restraint on the ABA and its members that the NBA and its members seek here.

32. Lest the filing of the complaint in the California action be viewed as an assertion by the ABA of its

alleged grievances in a natural forum, I respectfully point out to the Court that, wholly apart from the issues discussed above, this Court and not California is the natural forum for plaintiffs, as well as for the ABA's claims. The headquarters of both leagues and of the National Basketball Players Association (the plaintiffs' collective bargaining representative) are all located in this District, teams from both leagues are located in the immediate metropolitan area (Manhattan and Nassau County), and one additional NBA team is located in Buffalo, making this District and this State the most visited by the plaintiffs, and by all the defendants and their representatives. On the other hand, there is no ABA team in the Northern District of California where the California action has been brought. Moreover, the merger agreement, which is involved in all three counts of the complaint in the California action, was signed in New York and, by its terms, is to be governed by New York law. (Exhibit D, ¶11) It would, we submit, be the grossest injustice to require the NBA and its members to have to testify about its business practices in two different forums located 3000 miles apart, when discovery and trial in one suit, brought in the judicial district where both leagues are located, would suffice.

33. Furthermore, while we recognize that the merits of the allegations in the California action are not going to decide the instant motion, this Court should know that most of the antitrust allegations in the California action are also to be found in a 1969 complaint filed by the ABA against the NBA in a case that was subsequently to be

dismissed with prejudice according to the terms of the merger agreement. The merger agreement provided that the ABA and its members released the NBA and all its members who had signed the merger agreement from all claims asserted in that earlier action.

34. Finally, I should emphasize that the NBA and its members are not seeking to prevent the ABA from having its day in court. If the ABA truly believes that the California action is meritorious it can seek leave to amend its answer in this action and assert its claims against the NBA by means of a crossclaim here. Such a procedure would not only avoid the possible conflicts of decision and harassment outlined above, but would insure that the players, who have a vital interest in the outcome of the California action but who have not been made parties to it, would be heard.

35. The reason why this application is being brought on by order to show cause rather than by motion is that time is of the essence because of the January 30, 1974 filing of the California action, the prayer in the complaint (Exhibit A)for a preliminary injunction in that action, and the fact that NBA and its members must promptly defend themselves in that action if the relief requested herein is not promptly granted, and because the NBA is by this affidavit applying for a temporary restraining order.

36. No prior application for the relief sought herein has been made.

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WHEREFORE, it is respectfully submitted that the order to show cause should be signed, the temporary restraining order should be issued and, upon the return day of the motion, a preliminary injunction should be issued enjoining the ABA and its members from prosecuting the California action.

George G. Gallantz

Sworn to before me this
15th day of February, 1974.

Michael A. Cardozo
Notary Public

MICHAEL A. CARDOZO
NOTARY PUBLIC, State of New York
No. 60-5607715 Qual. in Westchester Co.
Cert. Filed in New York
Commission
1974

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al., Plaintiffs,	:	70 Civ. 1526 (RLC)
-against-	:	
NATIONAL BASKETBALL ASSOCIATION, et al., Defendants.	:	CONSENT ORDER GRANTING PRELIMINARY INJUNCTION AND PERMITTING AMENDMENT OF PLEADINGS

All of the defendants in this action, with the exception of defendants American Basketball Association ("ABA"), Madison Square Garden Corporation and Madison Square Garden Center, Inc. (all of said moving defendants being hereinafter referred to as the "NBA defendants"), having moved for a temporary restraining order restraining the ABA, its member teams and persons acting on its behalf from prosecuting an action entitled American Basketball Association, et al., v. National Basketball Association, et al., No. C-74-0232 RFP, in the United States District Court for the Northern District of California ("the California Action"), and this Court, on February 15, 1974, after hearing the argument of counsel for all the parties, having granted the requested temporary restraining order, a copy of which is annexed hereto as Exhibit A; and

Said temporary restraining order, on February 26, 1974, having been extended to March 15, 1974 by stipulation and order, a copy of which is annexed hereto as Exhibit B, upon the same terms and conditions as the original temporary restraining order; and

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The motion of the NBA defendants for a preliminary injunction to enjoin the defendant ABA, its member teams and persons acting on its behalf from prosecuting the California Action having come on to be heard before this Court, and the Court having heard the argument of counsel and good cause appearing, and upon the consents of Roth Carlson & Spengler, attorneys for defendant ABA, Proskauer Rose Goetz & Mendelsohn, attorneys for the NBA defendants, Simpson Thacher & Bartlett, attorneys for defendants Madison Square Garden Corporation and Madison Square Garden Center, Inc., and upon the consent of Weil, Gotshal & Manges, attorneys for plaintiffs, to paragraphs "1" and "5" below, it is ordered:

1. The defendant ABA, its member teams and their respective officers, agents, attorneys and all persons acting in concert with them be, and they hereby are, preliminarily enjoined from prosecuting the aforesaid California Action in the United States District Court of the Northern District of California, and the ABA, its member teams and their respective agents and attorneys hereby agree that, in view of the consented to nature of the preliminary injunction, no security therefor need be posted.

2. The bond of $5,000 previously posted by the NBA defendants with respect to the temporary restraining order referred to above is hereby released and discharged.

3. Plaintiffs, upon consent, have been given leave to file and cause to be served an amended complaint herein no later than April 3, 1974. The defendant ABA is hereby granted leave, over plaintiffs' objection, to serve and file an amended answer to said amended complaint which may contain counterclaims on behalf of the ABA and additional parties against plaintiffs and additional parties, and cross-claims on behalf of the ABA and additional parties against defendants and additional parties, without waiver

by any party of its or his defenses, if any, to the claims asserted in any such pleading by the ABA.

4. Upon service of the amended pleadings as provided in paragraph "3" and upon application of the NBA defendants, the California Action may be dismissed without prejudice to the rights, claims and causes of action of the defendant ABA and the named additional parties as set forth in said amended answer.

5. Plaintiffs' motion for an order pursuant to Rule 23 of the Federal Rules of Civil Procedure determining that this action may be maintained as a class action, which motion is now returnable on April 4, 1974, is held in abeyance without prejudice to modification upon completion of the service of amended pleadings as aforesaid and is adjourned to an agreeable date following service of such pleadings.

Dated: New York, New York
March 11, 1974

s/ Robert L. Carter
U.S.D.J.

CONSENTED TO:

ROTH CARLSON & SPENGLER

By Robert T. Carlson
Attorneys for defendant ABA and its member teams

PROSKAUER ROSE GOETZ & MENDELSOHN

By Michael A. Cardozo
Attorneys for NBA Defendants

SIMPSON THACHER & BARTLETT

By Roger B. Kent
Attorneys for defendants Madison Square Garden Corporation and Madison Square Garden Center, Inc.

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CONSENTED TO AS TO PARAGRAPHS "1" and "5" ONLY:

WEIL, GOTSHAL & MANGES

By _____
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al., individually and as representatives of all present and future active players in the National Basketball Association,	70 Civ. 1526 (RLC)
Plaintiffs,	NOTICE OF MOTION TO MAINTAIN A CLASS ACTION
-against-	
NATIONAL BASKETBALL ASSOCIATION, et al.,	
Defendants.	

SIRS:

PLEASE TAKE NOTICE that plaintiffs, by their undersigned attorneys, and upon the affidavit of Lawrence Fleisher, sworn to on March 11, 1974 and the exhibits annexed thereto, and upon the pleadings and all proceedings hitherto had herein, will move this Court at a motion term thereof to be held on April 4, 1974 at 10 o'clock in the forenoon, in Room 129 of the United States Courthouse, Foley Square, New York, New York, or as soon thereafter as counsel can be heard, for an order, pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure, determining that this action be maintained as a class action, pursuant to Rule 23(b)(1) and/or (2) of the Federal Rules of Civil Procedure, or in the alternative pursuant to Rule 23(b)(3), on behalf of all active players in the professional major basketball league known as the National Basketball Association ("NBA") from the date of the commencement of this action through the present and all future players in the NBA who will have become active players prior to the date of a final judgment in this action and for such other and

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further relief as this Court may deem proper.

Dated: New York, New York
March 11, 1974

WEIL, GOTSHAL & MANGES

By _____
(A Member of the Firm)
Attorneys for Plaintiffs
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New York, New York 10022
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TO: PROSKAUER, ROSE, GOETZ &
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

70 Civ. 1526 (RLC)

AFFIDAVIT

LAWRENCE FLEISHER, being duly sworn, deposes and says:

1. I am a member of the Bar of the State of New York. I am fully familiar with the facts herein and make this affidavit in support of plaintiffs' motion for class action determination pursuant to Federal Rule of Civil Procedure 23(c)(1).

2. In order to aid the Court in determining this class action motion, I shall briefly review the history of competition for the services of players in professional basketball, the prior proceedings and rulings in this action and the proceedings held in and the determinations made by the Senate Committee on the Judiciary and its subcommittee on Antitrust and Monopoly. I make reference herein to the following matters of prior record in this action, and the record in Congress:

(a) the original complaint filed by plaintiffs on April 16, 1970 ("Complaint");

(b) Affidavits of Lawrence Fleisher and Peter Gruenberger, dated April 17 and April 24, 1970, filed in support of the plaintiffs' motion for temporary restraining order and preliminary injunction ("Fleisher First Aff." and "Gruenberger First Aff.");

(c) Transcript of hearing before Judge Lloyd F. McMahon, dated April 17, 1970, during which Judge McMahon issued a temporary restraining order against defendants ("TRO Transcript");

(d) Transcripts of hearings before Judge Charles H. Tenney, dated May 1 and May 4, 1970, during which Judge Tenney issued a preliminary injunction against defendants (the "Injunction Transcript");

(e) Judge Tenney's preliminary injunction order, dated May 4, 1970 (the "Injunction Order");

(f) Judge Tenney's order, dated September 16, 1971, restricting improper communications by defendants with class members (the "Class Communications Order");

(g) Judge Tenney's opinion and order dated March 12, 1973, regarding plaintiff's motion to hold certain defendants in contempt (the "Contempt Order");

(h) The Report of the United States Senate Committee on the Judiciary, reporting out amendments to Senate Bill 2373 (originally proposed by defendants) (the "Senate Report");

(i) Transcript of Hearings (on defendants' proposed merger legislation) before the Senate Subcommittee on Antitrust and Monopoly ("Senate Transcript"); and

(j) Your Honor's order, dated August 3, 1973, modifying the Injunction Order in a limited degree upon application of the ABA.

3. As more fully set forth in the Fleisher First Aff. (¶¶ 6-14) the market of professional major league basketball is a multi-million dollar business operated for the benefit of owners of the member teams of the professional basketball leagues.

4. Professional basketball has always been a highly concentrated industry. From 1946 when the NBA (actually its predecessor the Basketball Association of America) came into being, until 1967 when the ABA came into being, the NBA had a 100% monopoly in professional major league basketball (except for the brief and aborted existence of the long defunct American Basketball League in 1961-62). Despite the advent of the ABA in 1967, from 1946 and continuing through the present there has been no intra-league competition among teams in the NBA for the services of any NBA player. This is true as to established players primarily because of the reserve clause contained in the uniform players contracts, as to new players because of the common draft for college players, and as to all players because of the boycotts, blacklists and tacit agreements among the NBA defendants not to compete with each other for players' services (Complaint ¶¶ 21-27, 35).

5. From 1946 and through the present an NBA player's rights to negotiate for his services fairly or freely within the NBA have been totally restrained beginning with the time that player starts his career. Under the common draft system, which is based upon the written and tacit agreements of all NBA member teams, each NBA team is given the right to choose specific college players with whom it wishes to negotiate. That right lies exclusively with the team, for if the player does not agree with the terms offered the player, he simply does not play in the NBA, because the same written and tacit agreements prevent any other NBA team from negotiating with him (Complaint ¶ 21).

6. As alleged in the Complaint (¶¶ 22-23), once the player accepts the terms of the team which drafts him, he must sign a Uniform Player Contract, which provides that unless and until the team decides in its sole absolute discretion to dispose of the player to another team, the player must play for only that team in the NBA. (A copy of a Uniform Player Contract applicable through 1971 is annexed hereto as Exhibit A).

7. That Uniform Contract contains the reserve clause (¶22), which extends whatever the specified written term of the contract may be, as follows: if the player refused to sign the same contract for the season following the last specified playing season in the contract, the team unilaterally deemed the contract extended for one year and the player's salary was reduced by 25%. This clause was interpreted by the NBA teams to mean a lifetime reserve

because the one year extension was renewed every year so long as the player refused to sign the contract tendered by his team. (Complaint ¶¶ 25-27). Although, as shown below, the NBA has stated that since 1971 its interpretation has changed, the new interpretation is just as much a restraint -- as the Senate Report shows -- as the original reserve clause.

8. No NBA player to date has to my knowledge ever escaped the impact of the college draft or the reserve clause so as ever to be allowed to negotiate freely with any but his assigned NBA team, either at the inception of his career or even at the end of the stated term of his contract. As a result, the negotiating rights of all the players prior to 1967 were non-existent, since without any alternative team with which to negotiate, they either accepted the offer made or did not play anywhere.

9. In no other business has this type of restriction been permitted to my knowledge. These restrictions imposed great hardships on all the NBA players -- who, it should be noted, are professionals possessing great skills. Of the literally hundreds of thousands of varsity high school players in the United States and of the thousands of varsity college players, each year fewer than fifty are good enough to join the NBA, whose total player population is about 200 today.

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10. In addition, a player's career is abnormally short compared with persons in other professions. His average career is seven years, his career may [illegible] injury at any time, and careers of over ten years are [illegible] Unless the player can exercise his rights to negotiate fairly during that short seven year average life span (while other professionals are building their careers), the player can never be compensated fairly for the services he performs. This is exactly what happened in the NBA (Complaint ¶ 36).

11. Due to the intra-league restraints imposed in the NBA, here is just a brief picture of the financial and fringe benefit situation the players of that league faced prior to the advent of the ABA in 1967 (See Senate Transcript 230-31):

(a) there was no formal minimum salary requirement -- many players earned $6,000-$7,000 per year;

(b) fifty per cent of the players in the NBA were earning $20,000 per year;

(c) in 1967 the median salary for all players was $23,000 per year;

(d) there was no medical or life insurance program for players;

(e) there was a pension plan, half funded by the player, that provided a player with a maximum of $2,400 a year payable at age 65, if he had ten years of service.

12. Until 1967, then, the NBA player had no escape route which fair competition for services provides in all other forms of business. Some competition did come, however, in 1967 when the ABA was formed. From 1967 to the present, the NBA's intra-league restraints and their effect did not change in any material way, but the ABA for the first time provided inter-league competition. For the first time another potential employer existed with whom to negotiate for the player just leaving college and for the player who was being trapped by the reserve clause even though the stated term of his contract had expired.

13. The competition fostered by the ABA had a dramatic impact on the depressed salaries and fringe benefits for the NBA players. The situation in 1967 compared with that in 1971 is illustrative (Senate Transcript 231-32):

(a) From no minimum salary requirement, the minimum salary rose to $16,500;

(b) From a situation where 50% of the NBA players earned under $20,000, 50% earned over $40,000;

(c) The pension plan of $2,400 payable to a ten-year veteran at age 65 rose to a pension of $7,200 a year at age 55.

(d) Every player became covered by medical and other insurance benefits.

14. These increases were league wide, not just limited to a few players. The NBA owners, as all businessmen do, were forced to meet the competition of the ABA by increasing all benefits to all players (Fleisher First Aff. ¶¶ 25-29). Finally, the NBA players could enjoy the benefits that all professional golfers, boxers and entertainers, not to mention any lawyer, doctor or scientist, always had -- to negotiate with more than one potential employer. The NBA players did not breach their contracts or act improperly in any way. They believed, as a class, and still believe as a class, that upon entry into their profession and upon expiration of the stated term of their contracts voluntarily entered into, they should have the right to negotiate in a freely competitive system without the intra-league restraints the NBA had always imposed (Complaint ¶¶ 44-45).

15. By late 1969 and early 1970, the NBA owners decided that they wanted to end the competition that had served to alleviate in some measure the intra-league restraints on players in the NBA. They began to meet secretly with the ABA to negotiate a merger and non-competition agreement pending the merger (Fleisher First Aff. ¶¶18-19). Such a merger was aimed directly at the NBA players -- competition for their services had become real and that competition was sought to be foreclosed, because the surviving entity in the merger would impose the intra-league restraints and no escape route would be possible (Complaint ¶¶ 46-48, 53-55).

16. When the merger became imminent in early 1970, the NBA players naturally became concerned with the impact such a merger would have on them. There were then 160 active players in the NBA, and each player (except for one) executed a written statement authorizing me to take steps to institute a class action on his behalf, claiming damages and attacking both the practices of the NBA which eliminated competition within the NBA and the proposed merger of the NBA and ABA.

17. The only player who did not sign the authorization was Connie Hawkins who had just recently settled his personal suit against the NBA and I was informed that he was not in a position because of such settlement to sign the authorization all the other players had signed.

18. The players on each NBA team have elected a player representative (one for each team) to represent the players in dealings common to the players, including common dealings with the team owners. The fourteen player representatives as named plaintiffs filed this action on April 16, 1970 on their own behalf and on behalf of a class of all the then active and future NBA players. The class as of April 1970 comprised 160 players then active in the NBA. The complaint alleges in essence that the NBA had restrained trade in and monopolized the acquisition, allocation and employment of professional players since 1946 through its intra-league restraints, all in violation of Sections 1 and 2 of the Sherman Act. With respect thereto,

the NBA players sought to enjoin these restraints (including the reserve clause and common draft) and sought treble damages. The complaint also alleged that the planned merger and non-competition agreement among all the defendants pending the merger also violated Sections 1 and 2 of the Sherman Act. The complaint sought a preliminary and permanent injunction on this attempted inter-league restraint.

19. Accordingly, on April 16, 1970 the named plaintiffs filed their motion for a temporary restraining order prohibiting the merger and non-competition agreement between the two leagues and their member teams. Judge McMahon, at the conclusion of a hearing on April 17, 1970, temporarily restrained any proposed merger or combination (TRO Transcript 33-34), holding that plaintiffs had made a sufficient showing that the net effect of a merger would be to eliminate all competition for the NBA players' services.

20. On May 1, 1970 Judge Tenney, after receiving affidavits and briefs from all the parties, held a hearing on the players' preliminary injunction motion against the merger. At the hearing the defendants conceded that they could not merge without a Congressional exemption from the antitrust laws. In light of that concession, Judge Tenney requested the parties to draft an injunction order which provided that there would be no merger or combination of any kind and there would be no anti-competitive agreements

of any kind, thus preserving competition, while the leagues petitioned Congress (Injunction Transcript, p. 47, 51-52). On May 4, 1970 Judge Tenney signed the Injunction Order, rejecting defendants' request that it be amended to show that it was on consent (Injunction Transcript, p. 65).

21. Clearly, the intra-league restraints as to which the NBA players had sued for damages, were inextricably bound up with the inter-league attempted restraints -- the merger -- which the defendants were taking to Congress for an exemption. Accordingly, the NBA players knew that all of the allegations in the complaint were to be aired before Congress and it would be wasteful to litigate just the intra-league restraints in this Court at the same time as all the issues were being heard in Congress.

22. As it turned out, the players were correct. The defendants entered into a formal, comprehensive merger agreement, subject they said to Congressional approval. They introduced a bill into the Senate (S. 2373) which simply provided for an exemption from the antitrust laws for their merger, but which did nothing to eliminate the intra-league restraints on these plaintiffs.

23. In September 1971 on the eve of the first hearing before the Senate Subcommittee, the NBA defendants, by letter dated September 2, 1971, presented their new interpretation of the reserve clause to the players. Their new interpretation was that despite the perpetual impact found in the language of the reserve clause, the reserve

clause was for one year only and thereafter a player was allegedly a "free agent". However, the word "free" was a misnomer, because the new interpretation also included a provision that the player becomes a "free" agent only after playing for one year after his stated playing term expires and even thereafter he is "free" to negotiate with a new team only if that new team pays compensation (in the form of money or players) to the team who owns the rights to the players.* The players, who had anticipated some form of this so-called "free" agent reserve system (Complaint ¶¶ 41-43) believed it to be as illegal as the perpetual reserve clause, and thus rejected the NBA's new interpretation and their unilateral attempt to impose it on the players.

24. The NBA owners did more, however; they sent their new interpretation to all the players, to the named plaintiffs and to the class members in the action, and sought to influence the players to support the owners' efforts in Congress. That move backfired because: (a) the named plaintiffs immediately sought and obtained from Judge Tenney on September 16, 1971 the Class Communications Order which prohibited defendants from in any way soliciting the members of the class; and (b) the entire class of plaintiffs vigorously opposed the attempt of the owners in Congress to obtain exempting legislation for the merger.

*The owners also changed the reserve clause to eliminate the 25% reduction in salary during the reserve or option year.

25. The hearings before the Senate Subcommittee, Chairman Ervin presiding, continued through 1971 and 1972. As shown by the Table of Contents in the two volumes of the Senate Transcript, many witnesses appeared in opposition to the owners' bill, including myself, antitrust counsel, three NBA players, the National Football League players association, former NBA owners, economists and financial experts from Brookings Institute, law professors, U.S. Senator Spong (Transcript 326) and Congressman Stokes (Transcript 750). Many documents were introduced into the record concerning the effects of the intra-league restraints on the plaintiffs here, and the official transcript totals 1,328 pages of fine print.

26. After deliberation, the full Committee on the Judiciary unanimously reported out an amended version of the bill. That Senate Report (a copy of which is annexed hereto as Exhibit B) completely reversed the original impact of the legislation sought by the owners. Rather than permitting the leagues to merge without considering the rights of the players, the full Committee proposed legislation permitting a merger but only on the following conditions:

(a) Every professional player has the right to enter into a contract without agreeing to permit an owner to control the player beyond the expiration of the term of his contract (Amendment No. 6, Section 4(a), Senate Report, p. 4), meaning that there would be no reserve clause for any established player in the NBA;

(b) A new player who is allocated to a team following the common draft can be bound to a single option year following the end of the time of his first contract (Amendment No. 6, Section 4(b), Senate Report, p. 4), meaning that the reserve clause is limited to rookie players and can be for one year only;

(c) All other reserve clauses are unenforceable and constitute misdemeanors punishable upon conviction by fines up to $50,000 or imprisonment for up to a year, or both (Amendment No. 6, Sections 4 (c) and (d), Senate Report, p. 5).

27. In explaining the reasons for these amendments the Committee unanimously agreed that the players should be prevented from:

> "being subjected to any option clause, reserve clause, or any method which in any way restricts his complete freedom to bargain once his original contract has expired." (Senate Report, p. 7)

28. With respect to the NBA's new interpretation of the reserve clause -- one year plus a compensating payment to the team who owns the player -- the Committee expressly stated in rejecting it:

> "The Committee has decided that every player should have the right and opportunity to sell his skills to the highest bidder for the highest price obtainable... In order for the player to have actual freedom to contract with the highest bidder for his skills, the Committee has decided that <u>there may not be any requirement whatsoever that any kind of compensation be paid to the professional basketball team of which that player was formerly a member</u>".(Senate Report, p.7; See <u>ibid.</u> p.14) (Emphasis supplied)

It stated that there "may not be a requirement" for any player by which his "former team is entitled to receive compensation." (Senate Report, p.15).

29. In further explaining the proposed amendments, and with great importance to the considerations underlying this class action motion, the Committee stated that it

> "considers it absolutely essential to provide the same protections to the players right to bargain as other Americans enjoy. The Committee received a great deal of testimony with respect to the benefits all players received as a result of the present competition between the 2 professional basketball leagues for their services. The Committee finds that these benefits extended not only to superstars and rookies, but to all the players in each league." (Senate Report, p.13) (Emphasis supplied)

In similar fashion, the Committee found that competition benefited this whole class uniformly, in stating:

> "An obvious result of the merger without player protection will be to depress the salary levels not only of rookies and superstars, but of veteran players as well." (Senate Report p. 14).

30. The Commitee also emphasized that every player has only "a limited time to earn his money" because of injury and that the average basketball player's career lasted 7 years (Senate Report, p. 13), and the Report concluded with respect to both the intra and inter-league

restraints that the

> "present use of option clauses, reserve clauses, and other devices to tie a player to a team deny him fundamental rights and constitute a violation of the antitrust laws. At the present time, some relief is enjoyed by the players because of the existence of two leagues. But if a merger takes place without taking care of the players, these protections will be lost." (Senate Report, p. 14). (Emphasis supplied)

31. During the Senate hearings, the plaintiffs on behalf of all the NBA players moved to hold defendants in contempt of the Injunction Order with respect, inter alia, to an NBA resolution of March 23, 1972. Plaintiffs claimed that the resolution constituted a non-competition agreement that impacted all the players and was in violation of the specific terms of the Injunction Order. Judge Tenney declined to hold defendants in contempt. But, as the NBA has acknowledged in its papers on the pending motion it filed to enjoin the ABA from continuing to prosecute the new ABA action in San Francisco, Judge Tenney emphasized the Court's intention to insure vigorous competition for the services of players, and stated in an opinion dated March 12, 1973:

> "defendants are put on notice that the Court recognizes that the resolution may be applied in a non-competitive manner and that, in the future, the Court will examine with great care any evidence of such application." (Contempt Order, p. 10).

32. Following the issuance of the Senate Report, the second session of the 92nd Congress ended. In the 93rd Congress in March 1973, Senator Bayh introduced a bill that was substantially identical to the amended bill, discussed above, which had been reported out of the Judiciary Committee and which sought to give the players needed protection. While the ABA was in favor of that bill, as it showed in this Court when it sought in August 1973 a limited modification of the Injunction Order, the NBA apparently lost interest in any legislation that protected the players' rights.

33. Thus, this Court in recognition of the rights of all the NBA players and after a hearing, ordered that representatives of the NBA and ABA might meet to discuss a merger without Congressional approval, provided however in a modified order dated August 3, 1973 that

(a) any agreement "must deal specifically with and indicate the disposition of uniform player contracts, the common draft and the reserve clause," and

(b) representatives of the NBA players must be present at all discussions relating to the rights, privileges and immunities of the players.

34. I am not aware of the number or substance of any discussions held between the leagues pursuant to the August 3 order, except for one inconclusive discussion at which I was present. Thereafter, in a conference held on

February 8, 1974 called at the request of the ABA, this Court further clarified the Injunction Order and the rights of all the players. The ABA's counsel suggested that the permanent injunction aspects of this case were "moot" and that the ABA should be permitted wide latitude in taking steps towards allowing four to six ABA teams to join the NBA. In response, the Court reminded defendants that the Injunction Order, as modified, forbade any kind of merger or combination of the two leagues or any member teams thereof and stated that any discussions between the leagues of ABA member teams joining the NBA were subject to the restrictions protecting the players contained in the modified Injunction Order.

35. The need for continued players protection is evidenced by a news article that appeared just last week in Newsday, a copy of which is annexed hereto as Exhibit C. There, ABA representatives are quoted to the effect that talks with the NBA are going on right now to accomplish the very merger or combination of member teams which the Injunction Order directly prohibits. Moreover, protection is required since the level of inter-league competition for the services of NBA players has dramatically decreased, almost to a standstill, as compared with the 1967-1971 level of competition prior to adoption of the formal merger agreement between the NBA, the ABA and their member teams.

This lack of competition exists even though that merger agreement expired by its terms in January 1974.

36. As the above history of this case shows, as set forth in the plaintiff's accompanying memorandum of law, and in the interests of fairness to all parties and of judicial economy, the issues to be decided here require class action treatment. The class of 160 active NBA players that existed in April 1970 has grown considerably. Approximately 74 of those 160 players have retired in the interim four years since 1970. They are still in the class and are adequately represented not only by the 11 of the 14 named plaintiffs who are still playing, but also by the named plaintiffs who have retired since 1970. In addition to those 75 players, approximately 90 players began and stopped playing in the NBA between 1970 and today. And today there are 200 active players in the NBA. (It should be noted that there were only 14 NBA teams in 1970. Today there are 17 teams with approximately 12 players per team.) Thus, the total number of class members is approximately 365. The class will expand as more players join the active ranks of players between now and the date of a final judgment herein.

37. By virtue of all the foregoing facts and reasons, and based upon the legal principles set forth

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in plaintiffs' accompanying memorandum of law, the Court should determine this action to be a class action under Rule 23(b)(1) and/or (b)(2), or in the alternative under Rule 23(b)(3).

Lawrence Fleisher

Lawrence Fleisher

Sworn to before me this

11th Day of March, 1974

Robert G. Sugarman

Notary Public

ROBERT G. SUGARMAN
Notary Public, State of New York
No. 38915.95
Qualified in Rockland County
Commission Expires March 30, 1975

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al., individually and as representatives of all present and future active players in the National Basketball Association,	:	
Plaintiffs,	:	70 Civ. 1526 (RLC)
-against-	:	
NATIONAL BASKETBALL ASSOCIATION, et al.,	:	
Defendants.	:	

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION TO MAINTAIN THIS SUIT AS A CLASS ACTION

Plaintiffs submit this memorandum in support of their motion, made pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure, for a determination that this action may be maintained as a class action pursuant to Rule 23(b)(1) and (2) or in the alternative pursuant to Rule 23(b)(3).

I. STATEMENT OF FACTS

The relevant facts which are dispositive on this class action motion are set forth in the accompanying affidavit

of Lawrence Fleisher, sworn to on March 11, 1974. These facts are not restated in full here but are only summarized in this statement of facts and in the discussion below of the applicable legal principles.

This is an antitrust action brought by the named plaintiffs, individually and on behalf of a class of professional basketball players, for a permanent injunction to prohibit present and future acts and for treble damages with respect to past, present and continuing acts which restrain and monopolize trade in major league professional basketball. This action involves two interrelated, but separate parts both of which constitute unlawful restraints of trade and monopolization in violation of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2). The first part relates to concerted acts and practices -- mainly through the reserve clause and the common draft -- committed since 1946 and continuing through the present among member teams and their owners in one league, the National Basketball Association (the "NBA"). The intent and effect of this uniform conspiracy and combination, which has been enforced by means of concerted boycotts, blacklists and refusals to deal, has been to eliminate all intra-league competition for the services of all NBA players. Plaintiffs

seek a permanent injunction and treble damages under Section 4 and 16 of the Clayton Act (15 U.S.C. §§15 and 26) with respect to these past, present and continuing acts and practices.

The second part of the case relates to a combination and conspiracy commencing in 1969 or early 1970, among all the NBA defendants and the American Basketball Association, (the "ABA") to eliminate and foreclose all inter-league competition for the services of NBA players that has existed since the advent of the ABA in 1967. As outlined below on this aspect of the case, the two leagues and all their member teams sought to combine and to enter into an interim non-competition agreement in 1970. They were temporarily restrained and preliminarily enjoined from so doing in this action in April and May 1970 upon hearings by two other judges of this Court. The defendants then sought a Congressional exemption for their plan, but after two years of hearings Congress refused to allow any merger or combination unless the reserve clause was substantially eliminated, on the ground that such a clause violated the antitrust laws. Inter-league competition nonetheless has ceased even though

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Congress rejected the defendants' plans more than a year ago. Moreover, as this Court is aware from the statements made by the Commissioner of the ABA, attempts are still being made to effect a combination or a partial combination of the leagues through the ruse of permitting certain ABA teams to join the NBA. Plaintiff's seek a permanent injunction against all defendants as to this aspect of the case to prevent any full or partial combination of the two leagues or their member teams -- the same relief Judge Tenney granted preliminarily to plaintiffs.

The NBA defendants can hardly be heard to complain about resolving all these issues by class action treatment in one forum at the same time. The Court now has pending before it a motion by the NBA defendants to enjoin the ABA from maintaining a newly filed suit against the NBA in San Francisco on the ground, inter alia, that it would be unfair to require the NBA to defend itself in two jurisdictions simultaneously with respect to issues similar to those raised by this action. It would be more inequitable to require several hundred plaintiffs to come thousands of miles to become named plaintiffs and thus to individually sue the NBA defendants and the ABA here, or to sue these defendants

in separate actions in separate districts, where all the issues these players wish to litigate as a class are not merely similar but are identical.

The Parties

The class is comprised only of active players for member teams of the NBA -- those who are presently active players; those who are no longer active but were active players between April 16, 1970 (the date this action commenced) and the present; and those who will have been active players in the future by the time of final judgment in this action.

The fourteen named plaintiffs all were active players in the NBA on April 16, 1970. Each named plaintiff was the duly elected (by the vote of other players on his team) player representative of his teammates for purposes of dealings between the players and the owners. Today eleven of the named plaintiffs are still active players in the NBA, and three are no longer active players in the NBA.*

* Two of such three players have retired since 1970 and one, Joseph Caldwell, is an active player in the American Basketball Association.

The defendants who have been parties in this action from the date of its commencement are the NBA, the ABA and the fourteen entities (corporations or partnerships) who were members of or owned member teams of the NBA on April 16, 1970. Since April 1970, the NBA has added three new member teams (making the total membership seventeen teams at present) and certain other NBA member teams have shifted ownership or location.

The original parties hereto have agreed by stipulation that the plaintiffs may amend and supplement the original complaint herein so as to add as defendants the three member teams who have joined the NBA since 1970 and the new NBA members arising from changes of ownership and location.

The effect of the defendants' illegal activities upon each named plaintiff and class member is, has been and will continue to be substantially identical -- all past, present and future NBA players have been and still are forced either to accept the intra-league anticompetitive and uniform conditions unilaterally imposed upon them by the NBA defendants or to risk forfeiting their right to earn their livelihood as professional basketball players. And, any

full or partia combination or merger of the NBA and ABA or their member teams, will forever foreclose the inter-league competition that existed between 1967 and 1970.

The indisputable facts involved here make it clear that plaintiffs and the whole class they represent form one homogeneous group which has been and still is the target of defendants' wrongful combinations and conspiracies. As detailed below as a matter of fact and applicable law, plaintiffs' class qualifies under every known standard for class action treatment under Rule 23(a) and is uniquely suited to be any one of, or all, of the three types of class provided for in Rule 23(b).* Plaintiffs maintain that this action should be accorded class treatment under both Rule 23(b)(1) and (2), and only if the Court believes necesary under Rule 23(b)(3).

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* This motion for a class determination is filed pursuant to a schedule ordered by the Court. Defendants' opposing papers are to be served by March 25, 1974 and plaintiffs' reply papers are to be served by April 2, 1974.

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II. THE APPLICABLE FACTS AND LAW ESTABLISH THAT THIS ACTION SHOULD BE MAINTAINED AS A CLASS ACTION PURSUANT TO ALL RULE 23 STANDARDS

Rule 23 requires first that in order for an action to be maintained as a class action, the four prerequisites of subdivision (a) of that rule must be met. Next, Rule 23 requires that the class must come within at least one of the three separate categories of actions set forth in subdivision (b). The instant action is particularly suited for class action treatment since, as shown below, the class here demonstrably satisfies the four prerequisites of Rule 23(a) and fits squarely within all three of the Rule 23(b) categories.

A. The Four Prerequisites of Rule 23(a) Are Satisfied By Plaintiffs' Class

1. Rule 23(a)(1) - The Class Is Too Numerous For Joinder

The first prerequisite to maintaining any class action is that "the class is so numerous that joinder of all members is impracticable." Rule 23(a)(1). The "impracticability" of joining all members of the class, within the

meaning of Rule 23, relates to the difficulty or inconvenience of requiring that all the class members personally be brought before the court as named plaintiffs. See Harris v. Palm Springs Alpine Estates, Inc., 329 F. 2d 909, 913-14 (9th Cir. 1964); Siegel v. Chicken Delight, Inc., 271 F. Supp. 722, 725 (N.D. Cal. 1967); Goldstein v. North Jersey Trust Co., 39 F.R.D. 363, 367 (S.D.N.Y. 1966).

Here, the class of NBA players at the time this action commenced consisted of approximately 160 players then active in the NBA. The class has grown, so that today, counting all players who played actively between 1970 and the present, it consists of approximately 365 players.* There are 200 active players at present (85 of them of the original 160), 75 of the original 160 who retired between 1970 and today, and 90 who started and stopped playing in that period. The class also includes all future active players in the NBA, who will have become active players prior to a final judgment in this action. It is unknown at this time how many such future active players there will have been by then, but past experience may form a guide. Not counting additional

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* Players who have been on NBA team rosters only during training seasons or who may have been under contract with NBA teams but who never played have not been included in these numbers of class members.

players that may come into the league through entry of expansion teams, an average of approximately 40 to 50 new active players appear on the scene each year.

The class members, present and past, reside and work in many different jurisdictions throughout the United States. Because of this wide dispersion, it would be difficult and impracticable for every one of the 200 present players, and even more so for each of the 165 past players, to be forced to join this action as a named plaintiff or to bring his own action in another jurisdiction. The players expressly considered the impracticability of such a piecemeal approach and sought to avoid it in 1970 before bringing this action, when everyone of the 160 then active players (but one)* specifically authorized in writing the institution of this class action on his behalf.

Numerous courts have granted class action status in suits involving far fewer class members and in far less compelling circumstances: Korn v. Franchard Corp., 456 F. 2d

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* The sole exception -- the one player who did not sign such authorization -- was Connie Hawkins, then playing for the Phoenix Suns, who did not sign because he had just settled an unrelated antitrust action he had brought against certain of the NBA defendants.

1206, 1209 (2d Cir. 1972) (a class of 70 investors "would suffice for a proper class"); Sunrise Toyota, Ltd. v. Toyota Motor Co., 55 F.R.D. 519, 533 (S.D.N.Y. 1972) (87 automobile dealers "is numerous enough"); Butkus v. Chicken Unlimited Enterprises, Inc., 1971 CCH Trade Cases ¶73, 780 at p. 91, 291 (N.D. Ill. 1971) (35 franchisees meet the numerosity requirement); Fidelis Corp. v. Litton Industries, Inc., 293 F. Supp. 164, 170 (S.D.N.Y. 1968) (between 35 and 70 shareholders satisfy Rule 23(a)(1).

In this case, too, the requirement of Rule 23(a)(1) should be held satisfied, since upholding this class will, as in those cases, serve to avoid multiplicity of lawsuits and the consequent inconvenience and heavy burden to all parties, witnesses and calendars of potentially many courts.

2. Rule 23(a)(2) - Common Factual And Legal Questions Exist

Plaintiffs have alleged with respect to intra-league competition for NBA players' services that the NBA "defendants and their predecessors have engaged in a concerted plan, combination or conspiracy to monopolize and restrain trade and commerce in major league professional

basketball" designed to "eliminate competition in the acquisition, allocation and employment of the NBA players" (Complaint ¶20). Plaintiffs have alleged the common means by which this conspiracy and combination have been carried out and its common effects on all the NBA players (Complaint ¶21-43). Plaintiffs have also alleged the facts concerning: the short period of inter-league competition for NBA players' services (Complaint ¶44-45); the conspiracy to end such competition through agreements not to compete and merger of the competitors (Complaint ¶46-56); and the present attempts to merge or combine, at least in part (Fleisher Affidavit ¶34). These allegations alone are sufficient to establish the "common nucleus of operative facts" necessary to satisfy Rule 23(a)(2).* Weiss v. Tenney Corp., 47 F.R.D. 283, 293 (S.D.N.Y. 1969); Illinois v. Harper & Row Publishers, Inc., 301 F. Supp. 484, 488 (N.D. Ill. 1969); Minnesota v. United States Steel Corp., 44 F.R.D. 559, 566

* As shown in Point II.B.3, infra, these allegations of conspiracy are also sufficient to satisfy the additional requirement of Rule 23(b)(3) that common questions of law and fact "predominate" over merely individual issues.

(D. Minn. 1968); Siegel v. Chicken Delight, Inc., supra, 271 F. Supp. at 726. The Court in Siegel, in granting class action status, expressly held:

> "It is the existence or non-existence of the alleged conspiracy .... that form the common questions of law or fact in this case. There is present herein a common nucleus of operative facts even though there may be lacking complete identity." (271 F. Supp. at 726).

Here, there is a complete identity of facts forming a common nucleus and much more: (1) each member of the class, including each representative plaintiff, was, is or will be a signatory to a uniform player's contract with one of the defendant NBA teams which, with minor exceptions are substantially identical throughout the NBA; (2) each player was, is or will be subject to uniform agreements, rules, regulations and practices among the NBA defendants, which were, are or will be uniformly imposed upon each class member; (3) each player and his ability to negotiate freely has been, is or will be the specific target of defendants' unlawful intra-league (within the NBA) and inter-league (between the NBA and ABA) concerted activities and combinations; (4) each player will be uniformly impacted if defendants' are

permitted to carry out their illegal scheme to merge or combine in whole or in part; and (5) each player will obtain the same qualitative benefits from the injunctive relief sought by this action. The identical nature of all these matters more than satisfies the commonality requirement of Rule 23(a)(2).

3. Rule 23(a)(3)-(4) - The Claims Of The Named Plaintiffs Are Typical Of The Claims Of The Class And The Named Plaintiffs Will Fairly And Adequately Represent The Interests Of The Class

It has generally been recognized that the requirements of typicality and adequacy of representation under Rules 23(a)(3) and (a)(4) are substantially the same. 3B Moore, Federal Practice, ¶23.06-2. In order to satisfy these requirements, it need only be shown that the interests of the representative parties are coextensive with those of the class members they seek to represent, and that there is no antagonistic or adverse interest among the representative parties and the members of the class.*

* See e.g., Vernon J. Rockler and Co. v. Graphic Enterprises, Inc., 52 F.R.D. 335, 340 (D. Minn. 1971); Dolgow v. Anderson, 43 F.R.D. 472, 494 (E.D.N.Y. 1968), rev'd on other grounds, 438 F. 2d 825 (2d Cir. 1970).

Here, the named plaintiffs' interests and their claims are not merely coextensive with those of other NBA players, they are identical in every material respect.* The claims asserted in the complaint all arise out of defendants' unlawful conspiracy to monopolize professional major league basketball as evidenced, inter alia, by the provisions of the uniform player contracts and the standardized by-laws, rules and regulations of the NBA, as well as by the boycotts, blacklists, system of fines and other concerted means by which the NBA defendants have enforced their intra-league restraints of trade. That all the class members have been or will be similarly affected by these defendants' past and continuing concerted actions is clearly evidenced by the fact that no NBA player has ever been permitted to negotiate with a team other than his team in the NBA or has moved from one team to another within the NBA, even though

* The only conceivable variance is the amount of money damages flowing to different class members as a result of defendants' unlawful activities. However, this type of difference has no significance whatever in this case since a class under Rule 23(b)(1) and/or (b)(2) exists, as to which money damages are irrelevant. Moreover, even in a Rule 23(b)(3) class, differences in damages consistently have been rejected by the courts as a basis for denying class status. See cases cited in Point II.B.3., infra at 29.

his specified contract term has expired. The only exception exists when team owners unilaterally decide to "trade" or "sell" a player. Thus, the reserve clause which binds a player to one team beyond the specified term of his contract, has effectively barred any freedom of contract or negotiation on the players' part.

Similarly, every player in the history of the NBA has been able to begin playing in the league from the college ranks only by joining the team in the NBA which happens to own the rights to that player. This is true by operation of the NBA's common draft of college players, whereby no player can choose the team with which he desires to play or negotiate upon entry into the league with any team other than the one he is told he may negotiate with. If the player does not accept the terms offered at the expiration of the stated term of his contract, he ceases to play basketball in the NBA, and if he does not accept the terms offered when he signs his first contract, he never begins to play basketball in the NBA. Moreover, the prior history of the efforts of the NBA and ABA to merge or combine, coupled with the present efforts of these defendants to

partially combine (which plantiffs contend is in violation of the extant injunction order) illustrates the co-extensive nature of the players' claims regarding inter-league competition. A cursory review of the Transcript of Hearings before the Senate Sub-Committee on Monopoly and Antitrust and of the Senate Report emanating therefrom reveals that elimination of the ABA as a competitor by any form of merger or combination, without a resultant elimination of the reserve clause, will adversely impact all NBA players (Fleisher Aff. ¶s.26-30).

Further, defendants cannot show that plaintiff players or their counsel will not fairly and adequately protect the interests of the class as a whole. Counsel for the representative players have had extensive experience in antitrust class action litigation and are amply qualified to conduct this lawsuit. They have already obtained in this action the temporary restraining order and preliminary injunction blocking the planned merger of the NBA and ABA. They then obtained an order preventing the defendants from improperly communicating with the class. They testified before Congress and were instrumental, together with several of the named plaintiffs, in blocking the legislation sought

by defendants to exempt the merger from the antitrust laws, unless and until the players' rights were protected by elimination of the reserve clause (See Senate Report 2373). It should be noted that the defendants' unsuccessful attempt to obtain Congressional approval of a merger between the two leagues without consideration of the players' rights, was based upon the legislation the two football leagues received nine years ago exempting that merger from the antitrust laws.

The interests of the named plaintiffs are neither antagonistic to nor in conflict with the interests of the class member NBA players. Every NBA player has the same interest in overthrowing the intra and inter-league restraints that exist or have been attempted. Each named plaintiff was elected by the players on his team to be the players' representative in dealings with management. The only conflict that suffices to destroy class status is a conflict between named plaintiffs and class members that goes to the heart of the subject matter of the law suit itself. Vernon J. Rockler and Co., Inc. v. Graphic Enterprises, Inc. 52 F.R.D. 335, 343-44 (D. Minn. 1971); Mersay v. First Republic Corp. of America, 43 F.R.D. 465, 469-70 (S.D.N.Y. 1968). See also, Gardner v. Awards Marketing Corp., 1972

CCH Trade Cases ¶74,224 (D. Utah 1972); McMackin v. Schwinn Bicycle Co., 1972 CCH Trade Cases ¶74,220 (N.D. Ill. 1972). In those cases, colorable claims of conflict were made but were overturned; no such claims can even be alleged here.

Indeed, the fact that all but one of the active NBA players at the time this action began expressly authorized in writing their representatives to attack the restraints on them and to institute this action destroys any possibility of potential conflict. This fact is particularly relevant in light of the many cases which have looked to express approval or disapproval of the class action by class members as crucial facts in determining the adequacy of representation. See Nolen v. Shaw-Walker Co., 449 F.2d 506 (6th Cir. 1971); Matarazzo v. Friendly Ice Cream Corp., 73-C-545 (E.D.N.Y. Slip. Op. 2/14/74); Miller v. Alexander, 1971 CCH Fed. Sec. Rep. ¶93,287 (E.D.N.Y. 1971); Shulman v. Ritzenberg, 47 F.R.D. 202 (D.D.C. 1969); Hess v. Anderson, Clayton & Co. 20 F.R.D. 466 (S.D. Cal. 1957). Plaintiffs submit, therefore, that no question under Rule 23(a)(3) or (4) can fairly be raised against maintenance of this class action.

Accordingly, for all the foregoing reasons plaintiffs' class is unassailable with respect to every prerequisite set forth in Rule 23(a).

B. PLAINTIFFS' CLASS SATISFIES EACH CATEGORY OF CLASS ACTION PERMITTED BY RULE 23(b)

1. 23(b)(1) - There Is Great Likelihood Of Inconsistent And/Or Dispositive Adjudications That Could Impair Rights of Class Members

The purpose of Rule 23(b)(1) is (i) to avoid the possibility of inconsistent adjudications as affecting the party opposing the class and (ii) to prevent the risk that an adjudication as to an individual class member would impair the rights of all other class members.

Both these dangers are presented here, because the factual and legal issues to be litigated in this case -- the existence or non-existence of the intra and inter-league conspiracies and combinations; the legality of the reserve clause, the common draft, the provisions of the uniform player contract, the league rules and regulations; and the propriety of granting final injunctive relief as to both the intra and inter-league restraints -- all arise out of the identical core of facts and jural relationships existing between each class member on the one hand, and each defendant on the other.

Thus, it would be inequitable both to the defendants, but more importantly to each individual NBA player, past, present and future, to permit some but not all to be bound by the determination of this Court as to every issue involved here. It would be incongruous and damaging for all parties were the reserve clause and common draft, for example, to be held illegal by one or more courts as to some of the players, but legal by other courts as to other players, or that with respect to some of the players the NBA and ABA could not merge, but as to other players they could merge. Such inconsistencies are the ones the Rule 23(b)(1) class was expressly designed to prevent. In Jacobi v. Bache & Co., Inc. 16 F.R. Serv. 2d 70 (S.D.N.Y. 1972), an antitrust conspiracy suit brought on behalf of brokerage firm securities representatives, Judge Ryan recently found that a Rule 23(b)(1) class existed, and held:

> "I find that to permit any member of the class to "opt out" might lead to conflicting and varying judgments in

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> separate actions filed by individual members of the class." (16 F.R. Serv. 2d at 71)*

Similarly, in Board of County Commissioners v. Wilshire Oil Co. of Texas, 1973-1 CCH Trade Case ¶74,458 (W.D. Okla, 1973), an antitrust price-fixing suit, the Court in finding a class (b)(1) action held:

> "[T]he prosecution of separate actions by individual [class members] would create a risk of inconsistent or varying adjudication with respect to individual [class members]." (at p. 94,046)

Other cases, in similar circumstances, have approved class action treatment under the 23(b)(1) criteria. See Petition of Gabel, 350 F.Supp. 624, 630 (C.D. Cal. 1972); Dale Electronics, Inc. v. R.C.L. Electronics, Inc., 53 F.R.D. 531, 537 (D.N.H. 1971); Minnesota v. United States Steel Corp., 44 .D. 559, 568 (D.Minn. 1968). There is no logical reason n for not treating this case to be a Rule 23(b)(1) class.

2. 23(b)(2) - Final Injunctive Relief Is Sought For The Class As A Whole

Rule 23(b)(2) mandates class action treatment where the parties opposing the class have acted in such a way with

* Only in a Rule 23(b)(3) class is formal notice to class members required and is the "opt out" procedure applicable. Of course, here, it would be particularly needless to require the players to go through the Rule 23(b)(3) notice procedure, since all but one class member as of 1970 expressly approved the institution of this class action.

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respect to the class members that final injunctive or declaratory relief may be appropriate. In the present case, the defendants (who oppose the class here), pursuant to their illegal conspiracies and/or combinations described above, have made each class member the target of their unlawful acts and plans. The defendants have thereby adversely affected and threaten to continue to adversely affect the rights of each class member in one identical way -- the value of the players' services has been artifically depressed and their ability to negotiate for their services illegally impaired, on an intra-league basis since the inception of the NBA and on an inter-league basis since the time the two leagues first sought to combine or should they in the future combine in any way.

Thus, for example, any type of NBA-ABA merger, the reserve clause, the common draft, the propagation of uniform player contracts and the imposition of uniform league rules, regulations and practices are all actions "generally applicable to the class" within the meaning of Rule 23(b)(2). Plaintiffs in this action have sought to permanently enjoin these and other unlawful practices by defendants. Indeed, at the

behest of this class, two judges of this Court previously have granted plaintiffs' motions for a temporary restraining order and preliminary injunction, thus thwarting at the outset defendants' unlawful plan to merge the rival NBA and ABA leagues in violation of the Sherman Act. Since such a merger or other combination would culminate in a single entity embodying all of the NBA's intra-league restraints (all of which plaintiffs also seek to enjoin) appropriate final injunctive relief is being sought in this action. The courts under similar circumstances have consistently granted class action status under Rule 23 (b)(2). Leisner v. New York Telephone Co., 17 F.R. Serv. 2d 114, 117 (S.D.N.Y. 1973); Kohn v. Royall, Koegel & Wells, 17 F.R. Serv. 2d 109, 112 (S.D.N.Y. 1973); Contract Buyers League v. F & F Investment, 1969 CCH Trade Cases, ¶72, 754, (N.D. Ill. 1969); Giordani v. Hoffman, 295 F. Supp. 463, 476 (E.D. Pa. 1969). See also, Norwalk CORE v. Norwalk Redevelopment Agency, 395 F. 2d 920 (2d Cir. 1968). The fact that damages are also being sought does not prevent class action treatment under subdivision (b)(2). See Leisner v. New York Telephone Co., supra., 17 F.R. Serv. 2d at 117. See also, Research Corp. v. Pfister Associated Growers, Inc., 301 F. Supp. 497 (N.D. Ill. 1969).

The Contract Buyers case, supra, is directly in point. There, as here, the antitrust violations arose out of a uniform series of agreements and provisions contained in installment sales contracts. There, as here, the plaintiffs sought to enjoin the continued violation of their rights. The Court, in upholding the class action, held:

> "Though decisions under this section generally relate to actions against a single defendant, the substance and purpose of 23(b)(2) are satisfied in the instant suit because the allegations of unlawful execution of the contracts and subsequent efforts at collection or eviction constitute a claim that 'a party opposing the class has acted or refused to act on grounds generally applicable to the class.'" (1969 CCH Trade Cases, ¶72,754 at 86,701)

This rationale is uniquely applicable to the "reserve clause" in the uniform player contracts, the common draft and defendants' efforts to enforce the unlawful effects thereof by means of boycotts, blacklists and concerted refusals to deal. These contractual provisions and concerted activities each constitute an "act" by the NBA defendants generally applicable to the class as a whole and the NBA's continued refusal to eliminate the reserve clause constitutes a refusal to act on grounds generally applicable to the class. Hence, this is an appropriate Rule 23(b)(2) class.

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3. 23(b)(3) - Common Questions Of Law And Fact Predominate And A Class Action Is The Superior Method To Adjudicate This Controversy

Plaintiffs urge that this Court may properly find this action to be maintainable as a class action under both Rule 23(b)(1) and (2), and thus avoid the need to make findings under and employ the notice requirements of Rule 23(b)(3). Nonetheless, the requirements of (b)(3) are also easily met in this case.

The existence or non-existence of an antitrust conspiracy or combination alleged to be in violation of Section 1 and 2 of the Sherman Act which has been universally held to be a sufficient issue to satisfy the commonality requirement of subdivision Rule 23(a)(2), also satisfies the first part of Rule 23(b)(3). Antitrust cases involving issues of fact and law much less common than those involved here, consistently have been held to qualify under the additional "predominance" test set forth in subdivision (b)(3) because of the presence of a conspiracy allegation. As the Court in City of Philadelphia and Amherst Leasing Corp. v. Emhart Corp. 14 F.R. Serv. 2d 332 (E.D. Pa. 1970) held:

"Here, as in the normal antitrust case, proof of the conspiracy will present [the] predominant questions of both law and fact." (14 F.R. Serv. 2d at 335)*

But, again, this case presents many more readily demonstrable common -- if not identical -- issues of law and fact than are present in the usual case. The antitrust violations charged by plaintiffs all stem from uniform written agreements and other written documents (e.g. the by-laws of the NBA) and from standard patterns of conduct and tacit understandings among defendants, all of which have impaired or will in the future impair the rights of each NBA player in the same way. The cases are legion in which class actions are upheld where, as here, the injury to the class arises from

* For a myriad of other cases holding to the same effect, see e.g., Gold Strike Stamp Co. v. Christensen, 436 F.2d 791 (10th Cir. 1970); Matarazzo v. Friendly Ice Cream Corporation, supra; City of New York v. General Motors Corp., 1973-2 CCH Trade Cases ¶74,683 (S.D.N.Y. 1973); In Re Ampicillin Antitrust Litigation, 55 F.R.D. 269 (D.D.C. 1972); In Re Antibiotic Antitrust Actions, 333 F. Supp. 278 (S.D.N.Y. 1971); City of New York v. Darling-Delaware, Inc. 1971 CCH Trade Cases ¶73,691 (S.D.N.Y. 1971); City of Philadelphia v. American Oil Co., 53 F.R.D. 45 (D.N.J. 1971); Cusik v. N. V. Nederlandsche Combinatie Voor Chemische Industrie, 1971 CCH Trade Cases ¶73,454 (E.D. Pa. 1970); Iowa v. Union Asphalt & Roadoils, Inc., 281 F. Supp. 391 (S.D. Iowa 1968), aff'd, 409 F. 2d 1239 (8th Cir. 1969); Minnesota v. United States Steel Corp., supra; Philadelphia Electric Co. v. Anaconda American Brass Co., 43 F.R.D 452 (E.D. Pa. 1968).

standardized conduct arising from provisions contained in similar or identical documents or series of documents. E.g. Korn v. Franchard Corp., supra (prospectuses); Green v. Wolf Corp., 406 F. 2d 291 (2d Cir. 1968), cert. den'd., 395 U.S. 977 (1969)(prospectuses); Matarazzo v. Friendly IceCream Corporation, supra (franchise agreements); Sunrise Toyota, Ltd. v. Toyota Motor Co., supra (dealership agreements); McMackin v. Schwinn Bicycle Co., supra (franchise agreements); Butkus v. Chicken Unlimited Enterprises, Inc., supra (franchise agreements); Feder v. Harrington, 52 F.R.D. 178 (S.D.N.Y. 1970) (tender offers); Contract Buyers League v. F & F Investment, supra (installment sales contracts; Mersay v. First Republic Corp. of America, 43 F.R.D. 465 (S.D.N.Y. 1968) (registration statements); Siegel v. Chicken Delight, Inc., supra (franchise agreements). In Siegel, for example, the Court granted class action status because "the franchise agreement is the focal point of the alleged acts perpetrated by the defendants." 271 F.Supp. at 726 (Emphasis supplied).

The Court should note that this is not a case involving dissimilar written agreements, or differing oral statements made to different class members. Here, the focal points are uniform agreements. The only possible

non-common issue relates to the amount of damages suffered by each individual class member arising from the past and continuing intra-league restraints of the NBA defendants. Of course, the courts have universally rejected this difference as a basis for denying class treatment under Rule 23(b)(3). See, Matarazzo v. Friendly Ice Cream Corporation, supra, Slip. Op. at p. 11-12; City of New York v. General Motors Corp., supra at p. 94,999 (S.D.N.Y. 1973); Katz v. Carte Blanche Corp., 52 F.R.D. 510, 516 (W.D.Pa. 1971); City of Philadelphia v. American Oil Co., supra, 53 F.R.D. at 67-68; Siegel v. Chicken Delight, Inc., supra at 726; Kronenberg v. Hotel Governor Clinton, Inc., 41 F.R.D. 42, 46 (S.D.N.Y. 1966).

Since all relevant factual and legal questions presented by this case are identical among all NBA players, common issues clearly predominate over issues that may affect only individual players. Indeed, in examining the total foreclosure historically of intra-league competition for the services of NBA players by reason of the anti-competitive nature and effect of the reserve clause and the common draft, the common issues of fact and law do not merely predominate over individual issues; there are no merely individual issues.

In addition to satisfying the "predominance" test in Rule 23(b)(3), this class action in the Southern District of New York is superior to other available methods for the fair and efficient adjudication of this controversy. The findings required under the Rule 23(b)(3) "superiority" test are met as follows:

(i) Rule 23(b)(3)(A):

The interest of any individual class member in controlling the prosecution of this action as opposed to the class doing so is non-existent, because of the written authority given prior to the commencement of this suit, by every active NBA player, but one, to prosecute this class action. Also every NBA player opposed the attempt by the defendants to obtain pro-merger legislation during the more than two years in which the defendants were pleading their case in Congress. Moreover, the fact that individual class members here may have substantial damage claims does not lessen the superiority of this class action. See City of New York v. General Motors Corp., supra at p. 95,000, where that fact that each class member had multi-million dollar damage claims did not prevent the maintenance of the class suit.

(ii) Rule (23(b)(3)(B) and (C)

This action was the first to be filed by or on behalf of any NBA player under the anti-trust laws attacking the anti-competitive system under which he is forced to work and is the first action by any professional player in any sport attacking a planned combination of two rival leagues. No other similar action concerning any of the controversies alleged herein has been commenced by or against any member of the class, other than for individual contract disputes which have no bearing on the issues involved here. No Court has yet definitively ruled on the legality of the reserve clause, common draft* or proposed merger in professional basketball.

In addition, it would appear desirable to concentrate the litigation of these issues in the Southern District of New York since more defendants, including both the NBA and ABA, maintain their principal places of business within this district than in any other. Also it would ill behoove the NBA defendants to argue with respect to the class

*After this action was commenced, one player obtained on antitrust grounds a preliminary injunction against application as to him of one facet of the NBA common draft. See Haywood v. National Basketball Association, 401 U.S. 1204 (1971); Denver Rockets v. All-Pro Management, Inc., 1971 CCH Trade Cases ¶73,536 (C.D.Cal.1971). That dispute was settled before any decision was rendered on the merits.

plaintiffs that their claims should not be heard in this Court, while arguing at the same time that the ABA's just-filed San Francisco action against the NBA defendants should be heard in this Court. Based on factors similar to these, the Siegel court granted class status to an action involving 700 nationwide franchisees stating:

> "In addition, there is no indication that any other related litigation has been commenced by other members of the class nor is it apparent that the litigation should not be concentrated in a particular forum, Fed. R. Civ. P. 23(b)(3), thus achieving 'economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undersireable results.' Advisory Committee's Notes, 39 F.R.D. 102, 103." (271 F.Supp. at 725).

(iii) Rule 23(b)(3)(D)

This Court is not likely to encounter any problems in the management of this suit as a class action for any reason since, apart from the fact that the claims of each class member are identical: the size of the class is not so large as to render the administration of the class difficult (City of New York v. General Motors Corp., supra at p. 94,999); the class members are readily identifiable and can be notified if required under Rule 23 with

relative ease (the problems inherent in the management of an Eisen type case are simply not present here, see Eisen v. Carlisle & Jacquelin, 1973-1 CCH Trade Cases ¶74,476 (2d Cir. 1973)); and the class is homogeneous and its members are "well known as a group" (Gold Strike Stamp Co., v. Christensen, supra, at 798).

Under all the circumstances of this case, therefore, it would be "impractical to force each plaintiff to relitigate the common core of issues" involved here time and again either separately in this Court or in several different courts. Butkus v. Chicken Unlimited Enterprises, Inc., supra, 1971 CCH Trade Cases at p. 91,292. Principles of elemental procedural fairness and the dictates of judicial economy require that this action be maintained as a class action.

CONCLUSION

For all the foregoing reasons, plaintiffs respectfully submit that their motion for class action treatment pursuant

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to Rule 23(b)(1) and (2), or in the alternative Rule 23(b)(3), be granted in all respects.

Dated: New York, New York,
March 11, 1974.

WEIL, GOTSHAL & MANGES,

By: _____
(A Member of the Firm)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, WILLIAM BRADLEY, JOSEPH CALDWELL, ARCHIBALD CLARK, MELVIN COUNTS, JOHN HAVLICEK, DONALD KOJIS, JON McGLOCKLIN, McCOY McLEMORE, THOMAS MESCHERY, JEFFREY MULLINS, WESTLEY UNSELD, RICHARD VAN ARSDALE and CHESTER WALKER, individually and as representatives of all present and future active players in the National Basketball Association,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, a joint venture, MADISON SQUARE GARDEN CENTER, INC., MADISON SQUARE GARDEN CORPORATION, MILWAUKEE PROFESSIONAL SPORTS & SERVICES, INC., THE CAPITAL BULLETS BASKETBALL CLUB, INC. (formerly THE BALTIMORE BULLETS BASKETBALL CLUB, INC.), RIKO ENTERPRISES, INC., KINGS PROFESSIONAL BASKETBALL INC. (formerly CINCINNATI BASKETBALL CLUB COMPANY), BOSTON CELTIC BASKETBALL CLUB, INC. (formerly TRANS NATIONAL COMMUNICATIONS, INC.), ZOLLNER CORPORATION, ATLANTA HAWKS BASKETBALL, INC., CALIFORNIA SPORTS, INCORPORATED, THE CHICAGO PROFESSIONAL BASKETBALL CORPORATION, PHOENIX PROFESSIONAL BASKETBALL CLUB, GOLDEN STATE WARRIORS (formerly SAN FRANCISCO WARRIORS), SEATTLE SUPERSONICS CORPORATION, TEXAS SPORTS INVESTMENTS, INC. (formerly SAN DIEGO BASKETBALL CLUB), BUFFALO BRAVES, INC., CLEVELAND PROFESSIONAL BASKETBALL COMPANY and PRO BASKETBALL, INC., and AMERICAN BASKETBALL ASSOCIATION,

Defendants.

70 Civ. 1526 (RLC)

AMENDED AND SUPPLEMENTAL CLASS ACTION COMPLAINT

(Jury Trial is Demanded)

Plaintiffs, by their attorneys, for their complaint herein allege upon information and belief, except

as to paragraphs 1-5, 9-17, 19, 23-25, 36-41, 45, 48-50 and 53-61, which are alleged upon knowledge, as follows:

COUNT ONE, AS TO ALL DEFENDANTS EXCEPT AMERICAN BASKETBALL ASSOCIATION

JURISDICTION AND VENUE

1. This claim arises and is brought under Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15 and 26) to recover treble damages and the costs of suit, including reasonable attorneys' fees, for violation by defendants of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2), and to enjoin defendants from continuing hereafter to commit such violations.

2. Jurisdiction is vested in this Court by virtue of 28 U.S.C. §§ 1331 and 1337.

3. Each defendant transacts business or is found or has an agent within this District, and the unlawful activities complained of were and are being carried on in part by defendants within this District.

THE PARTIES

4. This action is brought on behalf of the approximately 160 professional basketball players who were at the time this action was originally commenced all of the current active players in the professional major basketball league known as the National Basketball Association (the "NBA"), and on behalf of those players who since that date became active players in the NBA, and those players who in the future will become active players in the NBA.

5. Plaintiffs William Bradley, Joseph Caldwell, Archibald Clark, Melvin Counts, John Havlicek, Donald Kojis, Jon McGlocklin, McCoy McLemore, Thomas Meschery, Jeffrey Mullins, Oscar Robertson, Westley Unseld, Richard Van Arsdale and Chester Walker are or were active players with, and each was, at the time this action was commenced, the elected player representative of one of the then 14 clubs in the NBA.

6. Defendant NBA is a joint venture which operates a major professional basketball league in the United States consisting of 17 members which own and operate professional basketball clubs located in 17 different home cities in the United States under franchise from the NBA. The NBA is found within this District, maintaining its principal office at 2 Pennsylvania Plaza, New York City.

7. The NBA member clubs are owned and operated for a profit by the following defendants, each of which is a corporation, except where noted, and is found or transacts business or is doing business within this District:

Defendants Club Owner	State of Organization or Incorporation	Club Name
Madison Square Garden Corporation and Madison Square Center, Inc.	Michigan	New York Knickerbockers
Milwaukee Professional Sports & Services, Inc.	Wisconsin	Milwaukee Bucks
The Capital Bullets Basketball Club, Inc. (formerly The Baltimore Bullets Basketball Club, Inc.)	Maryland	Capital Bullets (formerly Baltimore Bullets)
Riko Enterprises, Inc.	Pennsylvania	Philadelphia 76ers

Kings Professional Basketball, Inc. (formerly Cincinnati Basketball Club Company)	Ohio	Kansas City-Omaha Kings (formerly Cincinnati Royals)
Boston Celtics Basketball Club, Inc. (formerly Trans National Communi-cations, Inc.)	Massachusetts	Boston Celtics
Zollner Corporation	Indiana	Detroit Pistons
Atlanta Hawks Basketball, Inc.	Georgia	Atlanta Hawks
California Sports, Incorporated	California	Los Angeles Lakers
The Chicago Pro-fessional Basket-ball Corporation	Illinois	Chicago Bulls
Phoenix Professional Basketball Club	Arizona	Phoenix Suns
Golden State Warriors (a partnership)	California	Golden State Warriors (formerly San Francisco Warriors)
Seattle Supersonics	Washirgton	Seattle Supersonics
Texas Sports Invest-ments, Inc. (formerly San Diego Basketball Club, a partnership)	Texas	Houston Rockets (formerly San Diego Rockets)
Buffalo Braves, Inc.	New York	Buffalo Braves
Cleveland Professional Basketball Company	Ohio	Cleveland Caveliers
Pro Basketball Inc.	Oregon	Portland Trailblazers

8. Ned Irish, William Alverson, Abraham Pollin, Irving Kosloff, Joseph Axelson, Robert J. Schmertz, Jack Waldron, Fred Zollner, John Wilcox, Thomas Cousins, Jack Kent Cooke, Phillip T. Klutznick, Elmer Rich, Richard Block, Franklin Mieuli, Samuel Shulman, Raymond Patterson, Robert Brietbard, Paul Snyder, Nicholas Mileti and Herman Sarkowski are all former or present officers or representatives of the management of one of the aforesaid defendant club owners (in the order of the clubs as set forth in paragraph 7 above), and either at the time this suit was instituted or at present collectively constitute or constituted the total membership of the board of Governors of the NBA. The Board of Governors is a formal group of the NBA club owners which creates policy for and controls the affairs of the NBA.

CLASS ACTION

9. Plaintiffs are representatives of a class as defined by Rule 23 of the Federal Rules of Civil Procedure and bring this action on behalf of themselves and the entire class as described in paragraph 10 below (hereinafter sometimes referred to as the "plaintiff players").

10. The class is comprised of the approximately 365 players who play or, since the commencement of this action, have played for the 17 different NBA clubs located in 17 different home cities across the United States, and those who in the future become active players in the NBA.

11. The class is so numerous and geographically so widely distributed that joinder of all members is impracticable. There are questions of law or fact common to the class. The claims of the representative parties are typical of the claims of the class and the representative plaintiffs will fairly and adequately protect the interests of the class.

12. Each player is, has been or, if a future player, will be a signatory to a player's contract with one of the defendant clubs. Except for provisions as to individual compensation and other variations which do not materially affect this action, the contracts are substantially identical throughout the NBA. Moreover, each player is, has been or, if a future player, will be subject to uniform agreements, rules, regulations and practices among defendants, which are, have been or will be uniformly imposed upon each class member by defendants.

13. The prosecution of separate actions by individual members of the class would create the risk of

(a) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(b) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjuciations or substantially impair or impede their ability to protect their interests.

14. In construing and enforcing their uniform agreements, rules, regulations, and practices, and in taking and planning to take the actions described in COUNT THREE hereof, the defendants have acted, refused to act or will act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

15. The questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and the class action is superior to other available means for the fair and efficient adjudication of the controversy.

NATURE OF TRADE AND COMMERCE

16. The primary business in which the defendants are engaged is the public exhibition of the individual and collective professional basketball talents of plaintiff players. The players are, with rare exception, graduates of the ranks of college basketball who are signed to play for one of the defendant clubs, and whom defendants have described in the standard NBA player's contract as possessing extraordinary and unique skill and ability as basketball players.

17. Defendants' business of exhibiting major league professional basketball involves substantial volumes of interstate trade and commerce, including the following interstate activities: travel; communication; purchase and

movement of equipment; broadcasts; telecasts; advertisements; promotions; sales of tickets and concession items; and negotiations for all of the above.

18. Defendants' aforesaid interstate transactions involve collective annual expenditures and receipts of multi-millions of dollars.

19. The NBA for many years has been the sole or dominant major professional basketball league. Major league professional basketball is a distinct market covering the United States, which is to be distinguished from other sports and from college or minor league professional basketball for many reasons, including: the rules of the sport and the season during which it is played; the talents and rates of compensation of the players, for whom playing is their full-time profession; the nature and amounts of trade and commerce involved; the inherent structure of league play; and the appeal to and reaction of the public, both as spectators and as home viewers and listeners on television and radio.

20. Since its inception in or about 1946, the NBA (including its predecessor leagues) and the other defendants and their predecessors have engaged in a concerted plan, combination or conspiracy to monpolize and restrain the aforesaid trade and commerce in major league professional basketball. The structure of major league professional basketball and the NBA as the sole or dominant major professional league exists and has been perpetuated through

various written and tacit agreements and concerned practices and activities among defendants designed: (i) generally to control, regulate and dictate the terms upon which professional major league basketball shall be played in the United States, and (ii) specifically to eliminate competition in the acquisition, allocation and employment of the NBA players. The NBA players have been forced either to accept the anticompetitive conditions so imposed upon them or to risk forfeiting their right to earn their livelihood as professional basketball players and thus depriving them of the opportunity to exploit fully their professional talents.

21. The source of supply of basketball talent is found almost exclusively in the ranks of college players. The NBA and the other defendants, through a series of express and/or implied agreements, rules, regulations and practices, have developed the so-called college "player draft" which is designed to divide the market in this source of supply. Under the player draft, each defendant club is given the right to choose specific college players with whom it wishes to negotiate. This right is exclusive, in that if a college player for any reason does not wish to negotiate with or play for the defendant club which "owns" the rights to him, he may not negotiate with or play for any other NBA club.

22. Every college player who agrees to sign with one of the NBA clubs subsequent to the player draft, and every already established player each year, must sign a

contract entitled "National Basketball Association - Uniform Player Contract" (the "Uniform Contract"), a copy of which is annexed hereto as Exhibit A. The rules of the NBA require that only the Uniform Contract shall be used by each club in signing all players. Although there are a few exceptions to this rule, the few players who are not bound by the written anticompetitive terms of the Uniform Contract are nevertheless affected by the anticompetitive agreements, rules, regulations and practices concertedly imposed upon all players by defendants.

23. Each Uniform Contract must be filed with the Commissioner of the NBA, who has the power to veto any player's contract. The Commissioner, together with the Board of Governors, is empowered to, and does, unilaterally impose fines on the players.

24. The Uniform Contract provides that

(a) the player shall play basketball only for his club or its assignees until "sold" or "traded";

(b) the club has the absolute right against the will of a player to sell, exchange, assign or transfer the Uniform Contract on the same terms to another club; and

(c) If the player refuses to play for his club, the club may either terminate the Uniform Contract or seek an injunction to prevent the player from playing basketball for anyone else.

25. The Uniform Contract also contains the so-called "reserve" clause. Under the "reserve" clause, if a player refuses to sign the Uniform Contract for the next playing season, the Uniform Contract is unilaterally deemed by the club to be renewed and extended for the period of one year, upon the same terms and conditions, except that the player's compensation can be reduced by 25%.

26. The "reserve" clause was created by defendants, who have construed and attempted to enforce the clause as a perpetual option or right of renewal in favor of the NBA clubs so as to bind the player to one club for his entire playing career. According to defendants, the club has the express right unilaterally to keep renewing the Uniform Contract for one year for every year so long as the player refuses to execute the Uniform Contract.

27. By agreement, rule, regulation and practice no NBA club will negotiate with a player who (i) has signed the Uniform Contract to play for another club, (ii) has refused to sign the Uniform Contract with another club and is thus under "reserve" or (iii) is not playing for another club but is voluntarily retired, under suspension, in military service, or disabled or injured. Any "traded" or "sold" player is bound to his new club by the "reserve" clause in his assigned Uniform Contract.

28. By virtue of the agreements, rules, regulations and practices described in paragraphs 21-27, once a player decides he would like to play in the NBA, he must

start to play and continue to play for only one club in the NBA and none other during his playing career, except for a club to which he may be involuntarily "traded" or "sold". No other club will ever negotiate with him. Moreover, even years after his retirement as an active player, he may not seek to return to active status as a player or as a player-coach, unless the club which holds such lifetime rights to him as a player releases him unconditionally or extracts a forced "trade" or "sale" with the club which desires that player's services.

29. Defendants have attempted to extend this control over NBA players, by use of the same and similar concerted means, in an effort to prevent the players not only from freely negotiating with clubs within the NBA, but also from negotiating with or playing for clubs in any rival leagues.

30. In 1967, a rival professional basketball league known as the American Basketball Association (the "ABA") came into being and began to compete with the NBA for available player talent and spectator approval. Beginning with the advent of the ABA in 1967 and continuing to the present, the defendants have sought to prevent NBA players from playing in the ABA by use of the same or similar predatory practices alleged above in paragraph 28.

31. In short, defendants' concerted acts and practices are designed to prevent in perpetuity any player from playing professional basketball for anyone other than the NBA club to which the exclusive rights to his services have been granted by defendants for his lifetime.

SHERMAN ACT OFFENSES

32. Beginning at least as early as 1946, the exact date being to plaintiffs unknown, and continuing until the date of the filing of this complaint, the defendants have engaged in an unlawful combination or conspiracy to monopolize and to restrain the aforesaid trade and commerce in professional major league basketball in violation of Sections 1 and 2 of the Sherman Act.

33. The aforesaid combination or conspiracy consists of a continuing agreement, understanding and concert of action among defendants (i) generally to control, regulate and dictate the terms upon which professional major league basketball shall be played in the United States; (ii) specifically to allocate and divide the market of professional player talent; and (iii) to enforce the same by means of boycotts, blacklists and concerted refusals to deal.

34. The aforesaid combination or conspiracy has as its objective the elimination of all competition in the acquisition, allocation and employment of the services of professional basketball players.

35. Pursuant to the aforesaid combinations or conspiracy, the defendants have agreed to act in concert to bring about the aforesaid objective of the combination or conspiracy and have effectuated and furthered the same by diverse means and methods, including the following:

(a) by seeking to compel all players to deal with NBA clubs only on uniform terms and conditions and to execute the Uniform Contract and none other;

(b) by construing and attempting to enforce the "reserve" clauses as a perpetual right of option or renewal in favor of the NBA clubs;

(c) by refusing to permit a player during the "reserve" clause option period to play for or negotiate to play for any club in the NBA or in a competitive league;

(d) by boycotting, blacklisting and refusing to deal with any player who attempts to play for or negotiate to play for another NBA team during the "reserve" option period;

(e) by "selling" and "trading" players involuntarily and against their wishes;

(f) by instructing and seeking to compel each defendant club to deal and negotiate with all players only on uniform terms and conditions, other than as to matters of compensation, and to execute only the Uniform Contract with any player;

(g) by compelling each defendant club to refrain forever from employing or negotiating with any player who is under contract with another NBA club or who has refused to sign the Uniform Contract with another NBA club and is thus under "reserve" according to defendants;

(h) by boycotting, blacklisting or otherwise penalizing any NBA club which contracts or negotiates with any player described in subparagraph (g) above; and

(i) by utilizing the player draft as described in paragraph 21 above.

EFFECTS OF SHERMAN ACT OFFENSES

36. The aforesaid combination or conspiracy has had, among others, the following effects:

(a) competition among the defendant NBA clubs in the acquisition, allocation and employment of player talent has been suppressed and eliminated;

(b) price competition among the defendant NBA clubs for players has been suppressed and eliminated;

(c) plaintiff players have been perpetually bound against their will to one NBA club, unless "sold" or "traded" involuntarily to another NBA club, thus foreclosing them from negotiating with or playing for the NBA clubs of their choice;

(d) plaintiff players have been discouraged by means of defendants' threats from seeking employment outside of the NBA in rival leagues; and

(e) plaintiff players have been foreclosed from effectively negotiating their rates of

compensation and other terms of employment, and compensation rates for players among the NBA clubs have been fixed, maintained and stabilized at artificial and noncompetitive levels.

PLAINTIFFS' INJURIES

37. As a result of the aforesaid unlawful combination or conspiracy, plaintiff players have been injured in their business and property, in that they have lost substantial amounts of income which, but for the unlawful acts of defendants, they would have earned from playing professional basketball. Moreover, since plaintiff players are not free to exploit their reputations in locations of their choice, they have been restrained and injured in the pursuit of collateral activities, such as product endorsements and publicity appearances. The amounts of such damages are not presently ascertainable; when ascertained, plaintiffs will ask leave of the Court to amend the complaint by inserting said amounts herein.

38. Plaintiff players have also been injured, apart from financial considerations, as a result of the aforesaid combination or conspiracy, in that they cannot play in the NBA in locations of their choice or for clubs which may offer more favorable opportunities or conditions of employment.

39. The aforesaid combination or conspiracy is continuing, and is causing irreparable injury to plaintiff

players. Since any damages recoverable hereunder will only partially compensate them for all their injuries, plaintiff players have no complete and adequate remedy at law and the violations alleged herein should therefore be enjoined.

COUNT TWO, AS AGAINST ALL DEFENDANTS EXCEPT AMERICAN BASKETBALL ASSOCIATION

40. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 25, 27 through 30, 32 through 35, except 35(b), and [illegible] above.

41. If the "reserve" clause contained in the Uniform Contract is not deemed to be a perpetual right of option or renewal, any construction and enforcement of the "reserve" clause by limiting it to a one year (or other period) option would nevertheless violate Sections 1 and 2 of the Sherman Act. Such a limited construction would still bind each player involuntarily to a defendant NBA club for one year (or other period) after the term of the Uniform Contract.

42. By virtue of the same combination or conspiracy alleged above in COUNT ONE, no other NBA club would negotiate with or employ a player during this less than perpetual option period. Any player who would seek to negotiate with another NBA club after expiration of such one year (or other) option period, and any such other NBA club which agreed to negotiate with such player, would be subjected to the same boycott, blacklist, concerted refusal to deal or other penalty customarily imposed by defendants to enforce their combination or conspiracy to

monopolize and restrain the aforesaid trade and commerce in professional major league basketball. Thus, in the event the "reserve" clause is construed to mean a one year (or any other period), rather than a perpetual, right of option or renewal, a player would still be foreclosed from dealing with any other NBA club for his lifetime..

43. However, after expiration of such one year or other period, a player could seek to negotiate with a rival professional basketball league. The existence of a rival league would thus enable a player to earn a livelihood in professional basketball, since under such limited construction of the "reserve" clause, the player might have an available escape route from the anticompetitive structure of the NBA. Moreover, so long as such a rival league flourished, the players who signed with teams in such league would not be forced to seek a return to the NBA and be faced with its policies of boycott, blacklist and concerted refusal to deal.

44. Beginning with the advent of the ABA in 1967 and continuing to the present, the defendants have unlawfully combined or conspired to preserve their monopoly position and enhance the restraints of trade and commerce in professional major league basketball by using diverse predatory practices to destroy the ABA. All such attempts to foreclose competition from the ABA to date have failed. After a slow start, the ABA is beginning to flourish as an independent rival league.

45. As a result of the competition fostered by the continued independent existence of the ABA, which has provided the potential escape route for NBA players, certain NBA clubs have begun to increase the compensation of certain of the NBA players and prospective players above the artificially suppressed compensation levels in existence prior to the advent of competition from the ABA. The mere threat of taking this escape route by some NBA players has led to instant increases in their compensation.

46. Having failed to destroy the ABA, defendants are now combining or conspiring in further violation of Sections 1 and 2 of the Sherman Act to foreclose competition from the ABA by means of an agreement with the ABA to effect a merger, consolidation, acquisition or other combination of the two leagues (hereinafter referred to as the "merger"). Such a merger would have the purpose and effect of eliminating the ABA as the independent competitive force hereinbefore alleged.

47. In furtherance of such combination or conspiracy, the defendants are taking affirmative steps to eliminate competition from the ABA, even prior to merger of the two leagues. Defendants have entered into a non-competition agreement between the leagues and their respective clubs, pending effectuation of the merger, and are engaged in secret negotiations with the ABA to effectuate an imminent merger of the leagues.

48. The effects of the non-competition agreement and eventual merger with the ABA will be to eliminate the salutary consequences, described in paragraphs 43 and 45 above, of an independent ABA and to magnify the existing anticompetitive effects of the defendants' combination or conspiracy as alleged above.

49. Plaintiffs repeat and reallege the allegations contained in paragraphs 37 through 39 above.

COUNT THREE, AS
AGAINST ALL DEFENDANTS

50. Plaintiffs repeat and reallege the allegations contained in paragraphs 3 through 36, 38, 39 and 41 through 48 above.

51. Defendant ABA is a corporation organized under the laws of the State of Delaware, and is found or transacts business or is doing business within this District.

52. The ABA operates a major professional basketball league in the United States, in competition with the NBA, which consists of 10 members which own and operate professional basketball clubs located in 10 different home cities in the United States under franchise from the ABA.

53. Defendants' plan and scheme to effectuate a non-competition agreement and merger between the NBA and ABA constitutes a combination or conspiracy in restraint, and each overt act of defendants to consummate the same constitutes a restraint, of trade and commerce in professional major league basketball in violation of Section 1 of the

Sherman Act, and constitutes an attempt to monopolize and a combination or conspiracy to monopolize, and if consummated would constitute monopolization, of such trade and commerce in violation of Section 2 of the Sherman Act.

54. The NBA and ABA are the sole competitors in professional major league basketball, which is a highly concentrated market in the United States. Consummation of the merger would eliminate all actual and potential competition between the NBA and ABA, including competition in the acquisition, allocation and employment of plaintiff players and of all prospective major league professional basketball players. Effectuation of the non-competition agreement would eliminate all such actual and potential competition prior to a formal merger.

55. Consummation of the merger would give the NBA control of 100% of the market of professional major league basketball, and thus permit defendants freely to continue the unlawful practices alleged above in COUNTS ONE and TWO.

56. Consummation of the merger and effectuation of the non-competition agreement should be preliminarily and permanently enjoined, since the former will cause and the latter is causing irreparable injury to plaintiff players, for which there is no adequate remedy at law.

COUNT FOUR, AS AGAINST ALL
DEFENDANTS EXCEPT
AMERICAN BASKETBALL ASSOCIATION

57. Jurisdiction of this claim is based upon the principles of pendent jurisdiction. The amount in controversy exceeds $10,000 exclusive of interest and costs.

58. Plaintiffs repeat and reallege the allegations contained in paragraphs 3 through 31, 33 through 39, 41 through 48 and 51 through 56.

59. By virtue of the above-described agreements, rules, regulations and practices, defendants have combined or conspired to monopolize and restrain trade and plaintiff players' free exercise of playing professional basketball in New York and in the other states in which defendants exhibit professional basketball games, in violation of Section 340 of the General Business Law of New York and in violation of the antitrust and antiblacklisting statutes of such other states.

COUNT FIVE, AS AGAINST ALL
DEFENDANTS EXCEPT
AMERICAN BASKETBALL ASSOCIATION

60. Plaintiffs repeat and reallege the allegations contained in paragraphs 3 through 31, 33 through 39, 41 through 48 and 57 above.

61. By virtue of the above-described agreements, rules, regulations and practices, defendants have combined or conspired to monopolize and restrain trade and plaintiff players' free exercise of playing professional basketball in the several states in which defendants exhibit professional basketball games in violation of the common law of each of such states.

WHEREFORE, plaintiffs demand judgment against defendants, as follows:

1. With respect to the first and second counts:

(a) declaring defendants' combination or conspiracy to be unlawful under Sections 1 and 2 of the Sherman Act;

(b) preliminarily and permanently enjoining defendants from continuing to violate Sections 1 and 2 of the Sherman Act by means of the acts alleged herein or by any other means which would prevent plaintiff players from freely negotiating with any professional basketball club of their choice at the end of their current contracts, without giving effect to any alleged option or renewal right contained in the "reserve" clause;

(c) for treble the amount of damages suffered by plaintiffs as a result of the violations of the Sherman Act alleged herein; and

(d) for the costs of this action and reasonable attorneys' fees;

2. With respect to the second and third counts:

(a) declaring defendants' plan and scheme, and all steps taken pursuant thereto, to effectuate (i) a merger, consolidation, acquisition or combination by any means, by or between the NBA and ABA or its member clubs, and/or (ii) a non-competition agreement between the NBA and ABA or

their respective clubs, and such agreement itself, to be unlawful under Sections 1 and 2 of the Sherman Act; and

(b) preliminarilyand permanently enjoining defendants, their agents, servants, officers, employees, attorneys and all persons acting in concert with them from taking any steps in furtherance of an attempt to effectuate or consummate any such non-competition agreement, merger, consolidation, acquisition or combination;

3. With respect to the fourth and fifth counts:

(a) declaring defendants' combination and conspiracy to be unlawful under Section 340 of the General Business Law of New York and under the statutes of the several states in which defendants exhibit professional basketball games, and under the common law of all of such states;

(b) preliminarily and permanently enjoining defendants from continuing to violate such statutes and common law by means of the acts alleged herein or by any means which would prevent plaintiffs from freely negotiating with any professional basketball club of their choice at the end of their current contracts, without giving effect to any alleged option or renewal right contained in the "reserve" clause;

(c) for the amount of damages suffered by plaintiffs as a result of the statutory and common law violations alleged herein; and

(d) for the costs of this action and reasonable attorneys' fees; and

4. Such other and different relief as may to the Court seem just and proper.

Dated: New York, New York
April 22, 1974

Ira M. Millstein
A member of the firm of
WEIL, GOTSHAL & MANGES
767 Fifth Avenue
New York, N.Y. 10022
(212) 758-7800

Of Counsel:

PETER GRUENBERGER
ROBERT G. SUGARMAN
JAMES W. QUINN

NATIONAL BASKETBALL ASSOCIATION
UNIFORM PLAYER CONTRACT
(Revised Form 8-29-68)

ATTACHED TO ORIGINAL
COMPLAINT

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - -x

OSCAR ROBERTSON, et al.,

Plaintiffs,

against

NATIONAL BASKETBALL ASSOCIATION,
et al.,

Defendants.

- - - - - - - - - - - - - - - - - - -x

AMERICAN BASKETBALL ASSOCIATION, 70 Civ. 1526 RLC
et al.,

Counterclaimants and Cross-claimants.

against

OSCAR ROBERTSON, et al.,

Counter-defendants

and

NATIONAL BASKETBALL ASSOCIATION,
et al.,

Cross-defendants

- - - - - - - - - - - - - - - - - - -x

CROSS MOTIONS FOR SUMMARY JUDGMENT
AND TO DISSOLVE PRELIMINARY INJUNCTION

Defendant American Basketball Association moves this Court to enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, a summary judgment in defendant American Basketball Association's favor dismissing plaintiffs' action on the ground that there is no genuine issue as to any material fact and that the defendant American Basketball

**

**

FREDERICK P. FURTH
ATTORNEY AT LAW
1660 RUSS BUILDING
SAN FRANCISCO 94104
(415) 433-2070

Association is entitled to a judgment as a matter of law, and an Order dissolving the preliminary injunction granted May 4, 1970, as modified by the Order of August 3, 1973.

Cross motions are based upon:

(a) Notice of Cross Motions

(b) Memorandum of Points and Authorities

(c) Affidavits

(d) Facts of record herein

DATED: July 23, 1974
San Francisco, California

235 Montgomery Street
Russ Building, Suite 1330
San Francisco, Ca. 94104
Telephone: (415) 433-2070

FREDERICK P. FURTH
THOMAS R. FAHRNER
DANIEL S. MASON
LAW OFFICES OF FREDERICK P. FURTH

280 Park Avenue
New York, New York 10017
Telephone: (212) 682-4444

ROBERT S. CARLSON
SPENGLER, CARLSON, GUBAR & CHURCHILL

By _____
Attorneys for Defendant
American Basketball Association

FREDERICK P. FURTH
ATTORNEY AT LAW
1330 RUSS BUILDING
SAN FRANCISCO 94104
(415) 433-2070

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

OSCAR ROBERTSON, et al.,

Plaintiffs, 70 Civ. 1526 RLC

against

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

- x

AMERICAN BASKETBALL ASSOCIATION, et al.,

Counterclaimants and
Cross-claimants

against

OSCAR ROBERTSON, et al.,

Counter-defendants,

and

NATIONAL BASKETBALL ASSOCIATION, et al.,

Cross-defendants.

- x

AFFIDAVIT OF ROBERT C. NEFF

State of New York)
) ss.:
County of New York)

Robert C. Neff, being duly sworn, deposes and says:

1. I am an attorney of the State of New Jersey and a partner in the firm of Meth, Wood, Neff & Cooper, general counsel for the American Basketball Association (hereinafter the "ABA") defendant-counterclaimant herein.

2. I make this affidavit:

(a) In opposition to a motion by plaintiffs Robertson, et al., (hereinafter the "NBA Players")

to have 13 players certified as proper representatives of a class within the meaning of the Federal Rules of Civil Procedure, and

(b) In support of a motion by counsel for the ABA to quash the outstanding injunction against merger and/or for summary judgment and/or dismissal on the grounds that the players are barred by the laws of the United States from asserting collective bargaining demands under color of civil antitrust proceedings.

3. I am familiar with the pleadings and issues in this matter and have practiced in the area of labor law.

4. The plaintiffs on behalf of all present and future NBA players, seek to amend certain practices or provisions of their collective bargaining agreement dealing with option and compensation. Their alleged status, as a class, emanates from their intimation that they are independent contractors whose bargaining ability is emasculated by option, compensation, draft features and efforts towards league consolidation, all of which are facts of life in the National Basketball Association (hereinafter the "NBA") as well as other major professional sport leagues. The action by players is, in fact, a collective effort to obtain more favorable terms and conditions of employment.

5. Plaintiffs are all members of a single collective bargaining unit known as the National Basketball Association Players Association (hereinafrer the "Union"). Their Association is a union within the meaning of the National Labor Relations Act, the Norris-LaGuardia Act, and the antitrust laws of the United States and the several states. A true copy of the most recent Labor Management Report for said Association as filed with the Department of Labor, Regional Office, New York City, New York is

annexed hereto as Exhibit A.

6. The By-Laws of the Union are annexed as Exhibit B and their context, definitive of the purposes and procedure of the Union, provide the classic definition of a labor organization within the meaning of the Federal Acts. All members of plaintiffs' alleged class are members of the Union.

7. By membership in the Union and by designation of the Union as their exclusive bargaining representative, plaintiffs have created the perfect vehicle with which to press for more favorable terms and conditions of their employment.

8. That vehicle possesses substantial protective armor and weapons, to wit freedom from taxation as a non-profit organization, freedom from injunctive forces under the Norris-LaGuardia Act, freedom from application of antitrust laws within certain areas of conduct, and most importantly, freedom to picket and strike regardless of economic effect (to wit, the course of conduct currently followed by the National Football League Players).

9. Although copies of the NBA Players Collective Bargaining Agreement have not been forwarded by the NBA attorneys, they have advised me that the Player's Union demanded, successfully, that it be recognized as the true and lawful representative of the NBA Players. The Union has been so recognized, and they have followed that lawful course of bargaining over the years. Having opted to act collectively by their Union under the labor laws, they may not now proceed as independent contractor members in a class

action anti-trust procedure. The only proper and lawful representative of the players is the National Basketball Association Players Association, and the only proper and lawful means by which they may seek to improve the terms and conditions of their labor agreement is at the bargaining table using the statutory framework and weapons delineated by Congress in the Acts dealing with Labor Management Relations.

Robert C. Neff

Robert C. Neff

Sworn to before me this
25th day of July, 1974.

Michele W. Mahland

MICHELE W. MAHLAND
Notary Public, State of New York
No. 60-2475660
Qualified in Westchester County
Commission Expires March 30, 1975

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U.S. DEPARTMENT OF LABOR
Office of Labor-Management and Welfare-Pension Reports
Washington, D.C. 20210

LABOR ORGANIZATION ANNUAL REPORT

FORM APPROVED

Form approved by Bureau of the Budget No. 44-R1132.1

30

READ INSTRUCTIONS CAREFULLY BEFORE PREPARING REPORT

1. NAME OF LABOR ORGANIZATION (as shown on charter, constitution, etc.)	2. PERIOD COVERED BY THIS REPORT	Month	Day	Year	3. LM FILE NO.
National Basketball Players Association	From	7	1	72	068015
	To	6	30	73	

ADMINISTRATIVE OFFICE
NOV 26 1973

4a. AFFILIATION	4b. UNIT DESIGNATION (Local, Lodge, etc.)	4c. UNIT NUMBER	5. CITY, COUNTY AND STATE WHERE CHARTERED TO OPERATE. CITY	COUNTY	STATE
None		4	New York	New York	N. Y.

6. MAILING ADDRESS: (for official mail to the Union)	(in care of) NAME OF PERSON	NUMBER AND STREET	CITY	STATE	ZIP CODE
	Lawrence Fleisher	15 Columbus Circle	New York	New York	10023

7. Are records kept at address listed in item 6? If "NO", give address in item 18. ☒ YES ☐ NO

DURING THE REPORTING PERIOD DID YOUR ORGANIZATION DIRECTLY OR INDIRECTLY:

	Yes	No
8. Have any accounts in banks or other financial institutions been held in a name other than that of your organization?	☐	☒
9. Liquidate or reduce any liabilities without disbursement of cash?	☐	☒
10. Create or participate in the administration of any business enterprises or other organizations which met the definition of a "subsidiary organization" as that term is defined in the instructions on page 2?	☐	☒
11. Acquire any goods or property in any manner other than by purchase or dispose of such property in any manner other than by sale?	☐	☒
12. Create or participate in the administration of a trust or other fund or organization, a primary purpose of which is to provide benefits for members or their beneficiaries as defined by Section 3(l) of the Act?	☐	☒

INDICATE BELOW ANY CHANGES IN THE LABOR ORGANIZATION INFORMATION REPORT (LM-1) WHICH HAVE NOT BEEN PREVIOUSLY REPORTED

	Yes	No
13. Does the address in item 6 represent a change?	☐	☒
14. Has there been a change in officers?	☒	☐
15. Have there been any other changes?	☐	☒

AS OF THE END OF THE REPORTING PERIOD:

16. Were any assets pledged as security or encumbered in any other way?	☐	☒
17. Did your organization have any contingent liabilities?	☐	☒

(If the answer to any of the above questions, other than 13 and 14, is "Yes," details must be provided in item 18 below. See specific instructions for items which have been answered "Yes.")

Item No.	18. ADDITIONAL INFORMATION
14	Kevin Loughery resigned as Secretary-Treasurer; Paul Silas resigned as a Vice President and was elected to the office of Secretary-Treasurer; Walt Bellamy was elected as a Vice President

U.S. DEPT. OF LABOR
JAN 14 1974
RECEIVED

RECEIVED
LMSA
DEC 12 1973
CHICAGO AREA OFFICE

(If more space is needed, attach additional sheets with further statement, properly identified)

Each of the undersigned officers of the above labor organization declares that he is the officer required to sign this report and that the information contained in this report and any accompanying documents, is to the best of his knowledge and belief, true, correct, and complete.

21. SIGNED:	PRESIDENT	22. SIGNED:	TREASURER
Kevin Loughery	(If other title, specify in correct title above.)	Paul Silas	(If other title, specify in correct title above.)
at New York, N. Y. on Nov. 17, 1973		at New York, N. Y. on Nov. 6, 1973	
City State Date		City State Date	

Form LM-2 (Rev. 8/72) Page 1

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STATEMENT OF ASSETS AND LIABILITIES

ASSETS Item	Sch.	(Start of Reporting Period) (A)	(End of Reporting Period) (B)	LIABILITIES Item	Sch.	(Start of Reporting Period) (C)	(End of Reporting Period) (D)
19. Cash on Hand		$	$	29. Accounts Payable		$ 40 007	$ 5 572
20. Cash in Banks		50 706	32 123	30. Loans Payable	6		
21. Accounts Receivable		52 500	22 500	31. Mortgages Payable			
22. Loans Receivable	1			32. Other Liabilities	4		
23. U.S. Treasury Securities				33. TOTAL LIABILITIES		$ 40 007	$ 5 572
24. Mortgage Investments							
25. Other Investments	2	130 357	279 495				
26. Fixed Assets	5			NET ASSETS			
27. Other Assets	3	1 750	500	34. Net Assets (Item 28 less Item 33)		$ 195 306	$ [illegible] 049
28. TOTAL ASSETS		$ 235 313	$ 334 618				

STATEMENT OF RECEIPTS AND DISBURSEMENTS

Item CASH RECEIPTS	Sch.	(A)	Item CASH DISBURSEMENTS	Sch.	(B)
35. Dues		$ 60 150	52. Per Capita Tax		$
36. Per Capita Tax			53. Fees, Fines, Assessments, etc.		
37. Fees			54. To Affiliates of Funds Collected on Their Behalf		
38. Fines			55. For Account of Affiliates		
39. Assessments			56. To Officers:	8	
40. Work Permits			(a) Gross $ 976		976
41. On behalf of Affiliates for Transmittal to Them			(b) Less Deductions		
42. Sale of Supplies	[illegible]		57. To Employees:	9	
43. Interest	[illegible]	139	(a) Gross $		
44. Dividends	[illegible]	2 255	(b) Less Deductions		
45. Rents			58. Office and Administrative Expense		49 075
46. Loans Obtained	6		59. Educational and Public Expense		8 000
47. Sale of Investments and Fixed Assets	7	261 489	60. Professional Fees		72 640
48. Repayment of Loans Made	1		61. Benefits	11	
49. From Members for Disbursement on Their Behalf			62. Loans Made	1	
50. From Other Sources	13	229 173	63. Contributions, Gifts and Grants	12	
51. TOTAL RECEIPTS (Items 35 through 50)		$ 553 206	64. Supplies for Resale		40 [illegible] 159
			65. Purchase of Investments and Fixed Assets	10	
			66. Taxes		
			67. On Behalf of Individual Members		
			68. Repayment of Loans Obtained	6	34 [illegible]
			69. For Other Purposes	14	
			70. TOTAL DISBURSEMENTS (Items 52 through 69)		$ 571 78[illegible]

SCHEDULE 1—LOANS RECEIVABLE

Name of Officer, Employee, Member or Business Enterprise (A)	Purpose of Loan, Security, if any, and Arrangement for Repayment (B)	Loans Made During Period (C)	Repayments Received During Period (D)	Balance at End of Period (E)
1. None		$	$	$
2.				
3.				
4.				
5.				
6. Total Additional Listings, if any				
7. Total Loans not Listed Above				
8. Totals of lines 1 through 7		$	$	$
(Enter the totals of columns (C), (D), and (E) in items on page 2 as shown)		67	49	22

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ENTER AMOUNTS IN DOLLARS ONLY

SCHEDULE 2—OTHER INVESTMENTS (See Instructions, Item 25)

Description (A)	Amount (B)
Marketable Securities:	
1. Total Cost	$ 279 495
2. Total Book Value	279 495
3. Itemize each Marketable Security holding over $1,000 where book value exceeds 20% of the total on line 2 above.	
(a)	
(b)	
(c)	
(d)	
Other Investments:	
4. Total Cost	
5. Total Book Value	
6. Itemize each Other Investment holding over $1,000 where book value exceeds 20% of the total on line 5 above.	
(a)	
(b)	
(c)	
(d)	
7. Total of lines 2 and 5	$ 279 495

(Enter the total in Item on page ... as shown) 25

SCHEDULE 3—OTHER ASSETS (See Instructions, Item 27)

Description (A)	Book Value (B)
1. Advance for expenses	$ 500
2.	
3.	
4.	
5.	
6. Total of lines 1 through 5	$ 500

(Enter the total in Item on page 2 as shown) 27

SCHEDULE 4—OTHER LIABILITIES (See Instructions, Item 32)

Description (A)	Amount at End of Period (B)
1. None	$
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9. Total of lines 1 through 8	$

(Enter the total in Item on page 2 as shown) 32

SCHEDULE 5—FIXED ASSETS (See Instructions, Item 26)

Description (A)	Cost or Other Basis (B)	Total Depreciation (if any) (C)	Book Value (D)
1. Land (Give Location): None	$		$
2. Buildings (Give Location):		$	
3. Automotive Equipment			
4. Office Furniture and Equipment			
5. Other Fixed Assets			
6. Totals of lines 1 through 5	$	$	$

(Enter the total of column (D) in Item on page 2 as shown) 26

SCHEDULE 6—LOANS PAYABLE

Source (A)	Arrangements for Repayment (B)	Loans Obtained During Period (C)	Repayment of Loans During Period (D)	Balance at End of Period (E)
1. None		$	$	$
2.				
3.				
4.				
5. Total from Additional Listings, if any				
6. Totals of lines 1 through 5		$	$	$

(Enter the totals of columns (C), (D), and (E) in Items on page 2 as shown) ..... 45 ..... 68 30

SCHEDULE 7—SALE OF INVESTMENTS AND FIXED ASSETS (See Instructions, Item 47)

Description of Assets Sold (If Land or Building, Give Location) (A)	Cost (B)	Book Value (C)	Gross Sales Price (D)	Amount Received (E)
1. Listed marketable securities (9 sales)	$ 257 020	$ 257 020	$ 261 489	$ 261 4
2.				
3.				
4.				
5. Total of lines 1 through 4	$ 257 020	$ 257 020	$ 261 489	$ 261 4

(Enter the total of column (D) in Item on page 2 as shown) 47

Form [illegible]

ENTER DOLLARS IN WHOLE DOLLARS ONLY

SCHEDULE 8—DISBURSEMENTS TO OFFICERS (See Instructions, Item 56)

Name (A)	Title (B)	Status (C)	Gross Salary (before taxes and other deductions) (D)	Allowances (E)	Other Direct and Indirect Disbursements: Expenses Including Reimbursed Expenses (F)	Other Direct and Indirect Disbursements: Other Disbursements (G)	Total (H)
1. Oscar Robertson	Pres.	C			160		160
2. John Havlicek	V.P.	C			170		170
3. Walt Bellamy	V.P.	N			280		280
4. Paul Silas	S-T	C			366		366
5.							
6.							
7. Total from Additional Listings, if any							
8. Totals of lines 1 through 7					976		976

(Enter the total of column (H) in Item on page 2 as shown) ..... 56(a)

SCHEDULE 9—DISBURSEMENTS TO EMPLOYEES (See Instructions, Item 57)

Name (A)	Position (B)	Name of Affiliated Organization (if applicable) (C)	Gross Salary (before taxes and other deductions) (D)	Allowances (E)	Other Direct and Indirect Disbursements: Expenses Including Reimbursed Expenses (F)	Other Direct and Indirect Disbursements: Other Disbursements (G)	Total (H)
1. None							
2.							
3.							
4.							
5. Total from Additional Listings, if any							
6. Total for all employees who, during the reporting period, received $10,000 or less gross salary, allowances, and other direct and indirect disbursements							
7. Totals of lines 1 through 6							

the total of column (H) in Item on page 2 as shown) ..... 57(a)

SCHEDULE 10—PURCHASE OF INVESTMENTS AND FIXED ASSETS (See Instructions, Item 65)

Description of Assets (if land or buildings, give location) (A)	Book Value (B)	Amount Paid (C)
1. Listed marketable securities (27 purchases)	406,158	406,158
2.		
3.		
4.		
5.		
6. Totals of lines 1 through 5	406,158	406,158

(Enter the total of column (C) in Item on page 2 as shown) 65

SCHEDULE 11—BENEFITS (See Instructions, Item 61)

Type of Benefit (A)	To Whom Paid (B)	Amount (C)
1. None		
2.		
3.		
4.		
5. Total of lines 1 through 4		

(Enter the total in Item on page 2 as shown) 61

SCHEDULE 12—CONTRIBUTIONS, GIFTS AND GRANTS (See Instructions, Item 63)

Type (A)	Amount (B)
1. None	
2.	
3.	
4.	
5. Total of lines 1 through 4	

(Enter the total in Item on page 2 as shown) 63

SCHEDULE 13—OTHER RECEIPTS (See Instructions, Item 50)

Other Sources (A)	Amount (B)
1. NBA-ABA Game - 1972	47,500
2. Collection of prior year advances	1,750
3. Royalties	92,814
4. Special functions	87,109
5.	
6. Total of lines 1 through 5	229,173

(Enter the total in Item on page 2 as shown) 50

SCHEDULE 14—OTHER DISBURSEMENTS (See Instructions, Item 69)

Other Purposes (A)	Amount (B)
1. NBA-ABA Game 1972 - as dis-	
2. bursing agent	34,435
3. Advance	500
4.	
5.	
6. Total of lines 1 through 5	34,935

(Enter the total in Item on page 2 as shown) 69

U.S. GOVERNMENT PRINTING OFFICE

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(212) 541-7113

NATIONAL BASKETBALL PLAYERS ASSOCIATION
15 COLUMBUS CIRCLE
NEW YORK, N. Y. 10023

OSCAR ROBERTSON, PRESIDENT
JOHN HAVLICEK, VICE PRESIDENT
WALT BELLAMY, VICE PRESIDENT
PAUL SILAS, SECRETARY
LAWRENCE FLEISHER, GENERAL COUNSEL

November 19, 1973

U. S. Department of Labor
Office of Labor-Management and
Welfare-Pension Reports
Washington, D. C. 20210

Gentlemen:

Enclosed find Form LM-2, Labor Organization Annual Report, for the National Basketball Players Association for the year ended June 30, 1973.

Very truly yours,

Lawrence Fleisher
General Counsel

LF:CAP

Enc.

EXHIBIT A

775

068015

CONSTITUTION AND BY-LAWS

of

NATIONAL BASKETBALL PLAYERS ASSOCIATION

ARTICLE I

Name

(a) The name of this Association shall be NATIONAL BASKETBALL PLAYERS ASSOCIATION.

(b) The principal office of this Association shall be located at 22 East 40th Street, in the City of New York, State of New York.

ARTICLE II

Purposes

The purposes for which this Association is formed are to represent its members in their dealings with the National Basketball Association and the managements of the various teams comprising the National Basketball Association; to improve the working conditions of its members, the conditions under which professional basketball competition is conducted, and the job security of its members; to promote the fraternal interests of its members; and to inculcate in them a high sense of loyalty to each other; and otherwise to promote the physical and general well-being of its members.

ARTICLE III

Membership

(a) Membership in this Association shall be open to any person who

Exhibit B-

is a player member of any of the basketball teams which comprise the National Basketball Association, except that any such persons who are also members of the coaching staff of any such team or otherwise employed in any managerial or business capacity by any such team or by the National Basketball Association may remain a member of this Association but may not become an active participant in the Association's meetings, nor act as a player representative, nor act as an officer of this Association.

(b) Any person eligible for membership in this Association may become a member thereof by paying to the Association annual membership dues for the first fiscal year of such membership.

(c) If any member of this Association shall cease to be a player member of any of the teams which comprise the National Basketball Association, such person's membership in this Association shall cease forthwith. If any member of this Association shall not pay to the Association his annual membership dues for the current fiscal year, such person's membership in this Association shall cease forthwith.

ARTICLE IV

Player Representatives

(a) There shall be a Player Representative representing each team comprising the National Basketball Association. Such Player Representatives shall be members of this Association.

(b) The Player Representatives for each team shall be elected by the members of the Association on such team. Each such Player Representative shall serve for a term of one year and until his successor shall be duly elected.

(c) The Player Representatives shall be the chief governing body of this Association, shall elect the officers thereof, and shall otherwise represent the members of this Association during the period between annual membership meetings.

ARTICLE V

Officers

(a) The officers of this Association shall be a President, an Executive Vice President, one or two Vice Presidents, and a Secretary-Treasurer.

(b) The said officers shall be elected by the Player Representatives and shall serve for a term of one year and until their successors shall have been duly elected and shall qualify. Vacancies in any office shall be filled by the Player Representatives of the Association at a regular or special meeting.

(c) The President shall preside at all meetings of the officers and members of this Association; he shall present an annual report to the annual meeting of this Association; and he shall otherwise enforce this Constitution and By-Laws and perform all the duties incident to his office.

(d) The Executive Vice President shall preside at all meetings of the Player Representatives of this Association at each annual meeting of the members thereof; he or the President shall cause to be called regular and special meetings of the officers, Player Representatives and members of this Association; shall sign and execute all contracts in the name of the Association and shall sign all checks, notes, drafts, or other orders for the payment of money; shall perform all duties incident to his office and generally supervise and control the affairs of this Association. In the event the Player Representatives do not elect an Executive Vice President, this function shall be filled by the General Counsel of this Association, and the General Counsel is authorized to perform all the functions of the Executive Vice President during that period.

(e) The Vice President shall, during the absence or incapacity of the President, perform the duties of the President and, when so acting, shall have all powers and be subject to the responsibilities of the office of the President.

(f) The Secretary-Treasurer or the General Counsel shall keep the minutes of the meetings of the officers, Player Representatives and members of this Association; shall give notice of special meetings thereof; shall maintain a record of the members of this Association and other necessary books and records; shall have care and custody of the funds of this Association and shall deposit same as directed by the Player Representatives

of this Association; shall sign all checks, notes, drafts or other orders for the payment of money; shall keep books of account of this Association; shall render a report with respect to the finances of this Association at the annual meeting of the members; and shall otherwise perform all duties incident to the office of Secretary-Treasurer of this Association.

(g) The President and the Vice Presidents shall each be a member of this Association. The Executive Vice President and the Secretary-Treasurer need not be members of this Association.

(h) The salaries, if any, of the officers of this Association shall be fixed from time to time by the Player Representatives of the Association.

ARTICLE VI

Meetings and Elections

(a) The members of the Association on each of the teams comprising the National Basketball Association shall meet separately, during the first week of the regular season of the National Basketball Association, for the election of a Player Representative for each such team. Such meetings shall each be held at an appropriate place in the home city of each such team. At such meetings, each member shall be entitled to one vote, and balloting shall be by secret ballot.

(b) Regular meetings of the Player Representatives of the Association shall be held semiannually, once on the approximate date of the National Basketball Association's All Star Game, such meeting to be held at an appropriate place in the city where such All Star Game is played, and once

during the first week in June of each year immediately following the annual meeting of the members. Election of the officers of the Association shall take place at the June meeting of the Player Representatives. At such election, each Player Representative shall be entitled to one vote, and the balloting shall be by secret ballot.

(c) The annual meeting of the members of this Association shall be held at the principal office of the Association, or at such other place as may be designated by the Executive Vice President or General Counsel of the Association during the first week of the month of June in each year. Two weeks' notice of the time and place of such annual meeting shall be given to each member of the Association.

(d) The officers of the Association shall meet for the purposes of considering the affairs of the Association and making recommendations to the Player Representatives. Such meetings shall be held not less than once every six months at a time and place to be designated by the Executive Vice President or General Counsel upon five days' notice to each of the officers.

(e) Special meetings of the Player Representatives of the Association may be called at any time by the Executive Vice President or General Counsel on five days' notice to the Player Representatives of the time, place and purpose thereof, and shall be called by him when requested in writing by three or more of the Player Representatives. Action may be taken by the Player Representatives of the Association without a meeting if such action is specifically approved in writing by a majority of the Player Representatives.

(f) Special meetings of the members of the Association may be called at any time by the Executive Vice President or General Counsel on two weeks' notice to the members of the time, place and purpose thereof, and shall be called by him at the written request of a majority of the Player Representatives of the Association. Action may be taken by the membership of the Association if such action is specifically approved in writing by a majority of the members of the Association.

(g) At any regular or special meeting of the Player Representatives or members of the Association, a majority shall constitute a quorum. Each Player Representative or member attending such meeting shall be entitled to one vote thereat, and action at any such meeting, except as otherwise herein prescribed, may be taken by a majority of those present thereat.

ARTICLE VII

Dues

(a) There shall be no initiation fee for admission to membership of the Association.

(b) The annual dues of the Association shall be twenty-five dollars ($25.00) payable by each member during the month of July in each year.

(c) There shall be no assessments of the members of this Association unless same are authorized by two-thirds of the Player Representatives of the Association.

(d) The funds of the Association shall be deposited by the Secretary-Treasurer or General Counsel as prescribed by the Player Representatives

and shall be used for the purposes of the Association as hereinabove in this Constitution set forth. This Association shall not operate for profit, and any funds on hand at the close of the Association's fiscal year shall be retained by the Association or expended for fraternal or other purposes of the Association.

ARTICLE VIII

Contracts

(a) All agreements between this Association and the National Basketball Association or the owners of the teams comprising the National Basketball Association shall be signed by the President of this Association and shall require the approval of two-thirds of the Player Representatives of the Association.

(b) Any other contracts to which this Association may be a party shall be signed by the General Counsel of the Association and shall require the approval of two-thirds of the Player Representatives of the Association.

ARTICLE IX

Committees

The Player Representatives of the Association, shall at any time and from time to time, appoint from the members of the Association such committees as may be required to properly conduct the affairs of the Association, and shall prescribe rules and regulations governing the conduct and functions of such committees.

ARTICLE X

Fiscal Year

(a) The fiscal and membership year of the Association shall commence on July 1 and end on the following June 30.

(b) The books of the Association shall be audited by auditors chosen by the Player Representatives of the Association once each year after the close of the fiscal year of the Association.

ARTICLE XI

Amendments

This Constitution and By-Laws may be amended by vote of two-thirds of the Player Representatives of the Association, or a majority of the membership of the Association. Such amendment may be approved at any regular or special meeting of the membership or Player Representatives or without a meeting as hereinabove in these By-Laws prescribed.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al., individually and as representatives of all present and future active players in the National Basketball Association,

Plaintiffs,

-against-

NOTICE OF MOTION

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

S I R S:

PLEASE TAKE NOTICE that upon the annexed affidavit of J. Walter Kennedy, sworn to July 26, 1974, and the exhibits submitted therewith including the six collective bargaining agreements that have been entered into between the National Basketball Association and the National Basketball Players Association, the amended and supplemental complaint, the answers thereto, and all the prior proceedings had herein, the undersigned will move this Court, on September 3, 1974, at the United States Courthouse, Foley Square, New York, New York at an hour and place to be designated by the Court, for an order:

(a) Pursuant to Rule 56(b) of the Federal Rules of Civil Procedure, granting summary judgment in this action to defendant National Basketball Association and its member teams on the ground that count I, paragraphs 40, 41, 42 and 49 of count II, and counts IV and V of the supplemental and amended complaint should be dismissed as a matter of law because the practices challenged therein come within the labor exemption to the antitrust laws;

(b) Pursuant to Rules 12 and 19 of the Federal Rules of Civil Procedure, dismissing said complaint on the ground that plaintiffs have failed to join the National Basketball Players Association as an indispensable party;

(c) Pursuant to Rule 56(b) of the Federal Rules of Civil Procedure, granting summary judgment to defendant National Basketball Association and its member teams on the ground that counts IV and V of the supplemental and amended complaint, purportedly based on state antitrust and common law, should be dismissed as a matter of law because state regulation would impose an impermissible burden on interstate commerce; and

(d) For such other and further relief as to this Court seems just and proper.

Dated: New York, New York
July 25, 1974

PROSKAUER ROSE GOETZ & MENDELSOHN

By _____
Attorneys for Defendant National Basketball Association and Its Member Teams
300 Park Avenue
New York, New York 10022
593-9000

TO: WEIL, GOTSHAL & MANGES
Attorneys for Plaintiffs
767 Fifth AVenue
New York, New York 10022

SPENGLER CARLSON GUBAR & CHURCHILL
Attorneys for Defendant American Basketball Association and Its Member Teams
280 Park Avenue
New York, New York 10017

KENNEDY
AFFIDAVIT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al., individually and as representatives of all present and future active players in the National Basketball Association,	70 Civ. 1526 (RLC)
Plaintiffs,	AFFIDAVIT
-against-	
NATIONAL BASKETBALL ASSOCIATION,	
Defendants.	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

J. WALTER KENNEDY, being duly sworn, deposes and says:

1. I am the Commissioner of defendant National Basketball Association ("NBA"), a position I have occupied since September 1963. As Commissioner, I am the chief executive officer of the NBA. I make this affidavit in support of the motion by all defendants except the American Basketball Association ("ABA") for summary judgment dismissing certain counts of the complaint or, in the alternative, dismissing the complaint for failure to join the National Basketball Players Association as an indispensable party.

The NBA

2. The NBA is a joint venture organized to operate a league consisting of professional basketball teams and has been in existence since 1946. The governing body of the NBA is the Board of Governors, which exercises general supervision of the NBA's affairs.

3. The named defendants in this action other than the NBA and the ABA are present or former members of the NBA.

4. The NBA presently has 18 members, each of which holds a franchise to operate a team in a different city in the league operated by the NBA, and each of which has one representative on the Board of Governors. For purposes of league play, the 18 NBA teams are divided into two conferences.

5. The staging of basketball games between teams owned and operated by NBA members involves interstate trade and commerce. On occasion, and to a degree, the staging of such games includes the following interstate activities: travel; communications; purchase and movement of equipment; broadcast; telecast; advertisements; promotions; sales of tickets and concession items; and negotiations and use of the mails and interstate telephones for all of the above. These interstate activities involve league annual expenditures and receipts in excess of $1,000,000, apart from the expenditures and receipts of individual members of the NBA.

The Players Association

6. The National Basketball Players Association has since in or about 1963 claimed to be the exclusive bargaining representative of all players employed by all members of the NBA. It is, in fact, a labor union and has been recognized and bargained with by the NBA as the exclusive representative of all NBA players.

7. Each of the named plaintiffs in this case was, when this action was commenced, his team's representative to the union -- in effect, a shop steward -- chosen as such by his teammates. Since at least 1965 plaintiff Oscar Robertson has been president of the Players Association.

8. In the collective bargaining negotiations that have been conducted between the NBA and the Players Association, the Players Association has always been represented by its counsel, Lawrence Fleisher. In fact, I am advised by counsel that although plaintiffs purport to bring this lawsuit "individually" and as representatives of a "class" of various NBA players, the National Basketball Players Association was actually authorized by its membership to retain Mr. Fleisher to initiate this action. (A copy of the authorization form, which I am advised has been produced by plaintiffs' attorneys, is Exhibit 1 to this affidavit. For convenience, all documents designated as exhibits to this affidavit will be served and filed in a separate, clasped booklet.)

9. Until October, 1967, agreement on a variety of matters between the NBA and the Players Association was confirmed by letter. Beginning in October 1967, however, the NBA and the Players Association have entered into six successive formal written collective bargaining agreements, copies of which are designated Exhibits 2 through 7 to this affidavit, as follows:

Date of Collective Bargaining Agreement	Exhibit No.
October 24, 1967	2
August 29, 1968	3
November 7, 1969	4
October 8, 1970	5
April 5, 1972	6
November 15, 1972	7

The sixth collective bargaining agreement referred to above (Exhibit 7), entered into on November 15, 1972, is the one currently in effect; it expires on June 1, 1975.

The NBA's Relationship to its Players

10. Until the commencement of the collective bargaining relationship between the NBA and the Players Association, the relationship between the NBA and the players was defined by the NBA Constitution and By-laws and the Uniform Player Contract, a standard contract form adopted by the NBA. (A copy of the current NBA Constitution and By-laws is Exhibit 8 to this affidavit; the present Uniform Player Contract is Exhibit "A" to the current collective bargaining agreement, which is Exhibit 7). Together, these documents, and the actions of the Board of Governors pursuant thereto, did (and along with the collective bargaining agreement still do) provide a comprehensive system both for the allocation of rights to negotiate and contract with players, and for dealings among NBA members in the assignment of such negotiation and contract rights. Some of the more important provisions of these documents -- especially in the context of this lawsuit -- are summarized in the following paragraphs.

11. The great majority of NBA players enter the league through the "college draft" which is, and has been for at least the last 25 years, conducted annually pursuant

to the NBA By-Laws. (Article VI) In the draft, the rights to negotiate with eligible college players are allocated, the teams with the worst won-lost records being given the right to select players before the more successful teams. A team which has drafted a college player has the exclusive NBA right to negotiate with, and sign, him. The eligibility of players for the college draft is set forth in Article II of the NBA By-Laws.

12. Once a player is signed to a contract, the NBA "lists" upon which his name may be placed ("active", "injured", "military service", etc.) are as provided for in the By-Laws (Article V), which also provide rules for the transfer of contracts by sale or trade (Article III, Sec. 3.06), and for the "waiver" of players whose services are no longer desired by a team. Priority to choose a "waived" player is given by the By-Laws to the NBA team with the worst won-lost record. (Article III, Secs. 3.07 - 3.11)

13. The Uniform Player Contract is a printed form designed to set forth the rights and obligations of player and team to each other. In addition to length of employment and compensation, it defines the obligations of players to attend games and events, limits the demands which teams may make on players, provides for per diem allowance for meals, sets forth standards of conduct for players, and provides the circumstances under which the relationship may be terminated. In practice, the Uniform

Player Contract is used as a form. Individual players have often obtained important modifications by changes in and riders to the form. Player salaries are individually negotiated between the player and his club, subject to the minimum salary requirements of the collective bargaining agreement. Last year, the average annual salary of the players represented by the Players Association exceeded $90,000.

14. In the present form of Uniform Player Contract the player agrees to play basketball "only for the Club and its assignees" (para 5), the club is given the right to assign the contract (para. 10), the assignee club is required to pay the player's moving expenses (para. 11), and the player agrees to report to his new club within a specified period of time. (para. 12) In addition, "any dispute arising between the player and the Club relating to any matter arising under this contract or concerning the performance or interpretation thereof [except injunctive suits to preclude the player from playing for another team]" is to be decided in accordance with the grievance and arbitration procedures of the collective bargaining agreement. (para. 21)

15. Paragraph 22 of the Uniform Player Contract contains the so-called "option clause". That paragraph, in its present form, gives the team an option to the player's services for one additional year beyond the stated term of the contract, at the same salary as the preceding year, provided certain formalities as to tender of contract, date of tender, etc., are met.

16. With respect to a player who "plays out" his option -- by playing for his club or its assignee for the additional year without signing a new contract -- the NBA policy, unless and until changed through the collective bargaining process, is that such a player is free to contract with any other NBA member. If the player does sign with a different NBA member, it becomes the obligation of the player's new team to compensate his old team for loss of the player. Determination of compensation includes assessing not only the immediate effect that the movement of a player from one team to another will have on each of the two teams and their respective players, but also the possibility that the uncompensated loss of a particular player might discourage the financial investments which teams in the NBA are expected to make in securing and developing talented players.

17. NBA members involved in player movement upon expiration of the option year have heretofore always been able to resolve a compensation question without the Commissioner's participation. However, if a dispute over compensation between two NBA members could not be resolved between them, the dispute could be placed before the Commissioner, who has final jurisdiction, pursuant to the NBA Constitution, "of any dispute involving two or more members of the Association." I believe that similar, although not identical, compensation rules exist in both the National Football League and the National Hockey League.

Collective Bargaining

18. The keystone to the first formal collective bargaining agreement (Exhibit 2) -- and the five collective bargaining agreements which followed -- was negotiation over the terms of the Uniform Player Contract, which, under the agreement, was required to be entered into by all players. Thus, paragraph 2 of that first agreement provided:

> "2. With the exception of provisions specifically applicable to individual players, the Uniform Player Contract to be entered into by each player and the member by which he is employed shall be in the form and substance of Exhibit A attached hereto."

The Uniform Player Contract can be altered by individual negotiation -- but only in the player's favor. In practice, it often has been so altered.

19. Since the first formal agreement, the Uniform Player Contract, or an amendment thereto, has been "Exhibit A" to every collective bargaining agreement between the NBA and the Players Association, and in each collective bargaining agreement changes have been made in that contract. In fact, in the most recent collective bargaining agreement, it was agreed -- at the request of the Players Association -- that a player must sign the Uniform Player Contract then in effect before even reporting to training camp.

20. Financially, the six agreements have resulted in (a) a provision for moving expenses of up to $1,700 for a player whose contract is assigned, in accordance with the provisions of the Uniform Player Contract, to another team; (b) a minimum annual NBA salary for new players, almost all of whom are drafted players, of $20,000; (c) a current

"play-off" pool of $850,000, for distribution to players participating in the 1975 NBA play-offs; (d) medical, dental and disability insurance; (e) the establishment of a fund for severance pay, now requiring yearly contributions from NBA members of over $400,000; (f) payment of a full year's compensation for any player whose services are terminated after December 1 of the playing season; and (g) full pension benefits for eligible players at age 50.

21. Similar gains have been made by the players on non-financial matters. The number of games -- exhibition, regular season or play-off -- which the NBA may schedule has now been limited. The number of rounds in the play-offs, the number of games in each round, and the number of teams that can participate in play-offs have been limited. In addition, the minimum number of players to be carried on a team's roster and to be in playing uniform for a game has now been prescribed as a matter of contract.

22. The provisions discussed in paragraphs 20 and 21 above are not the only gains made by the players. There have been many others agreed to by the NBA in the six formal collective bargaining agreements and during the pre-1967 years, as the result of collective bargaining between the NBA and the Players Association.

23. Moreover, the negotiations between the NBA and the Players Association have included discussions concerning the methods by which the right to negotiate with players are allocated and retained by NBA teams.

24. For example, a letter from the Players Association to the NBA, dated June 1, 1966 and signed by Lawrence Fleisher, counsel to the Players Association, reflects inclusion in the agenda for discussion between the Players Association and the NBA the following:

> "Please be advised that the National Basketball Players Association will propose the following items for consideration at [the meeting of the Board of Governors on June 8, 1966]:
>
> * * *
>
> 6. A workable plan toward the elimination of the present contractual arrangement, under which the players are unable to negotiate with any other team during their tenure in the NBA."

(A copy of the mimeographed copy of the letter of June 1, 1966 is Exhibit 9 to this affidavit.)

25. The minutes of the June 7 and 8, 1966 meeting of the NBA Board of Governors reflect attendance at that meeting by representatives of the Players Association in accordance with the letter of June 1, 1966. (Relevant excerpts of the minutes are Exhibit 10 to this affidavit.)

26. On September 28, 1966 Mr. Fleisher wrote to me concerning the Players Association's "proposal for the removal of the reserve clause, through voluntary cooperation between the owners and the players...." As Mr. Fleisher's letter (a copy of which is Exhibit 11 to this affidavit) detailed the proposal:

> "If you recall, our preliminary thoughts were that a procedure could be established whereby a player could, on his own volition, only play for two teams during the tenure of his career and that, by limiting his right to play with more than one other team, we would be able to eliminate the fear of excessive pay, etc."

27. Mr. Fleisher's September 28, 1966 letter was followed by his letter of December 6, 1966 to me (Exhibit 12) and my response of December 22, 1966 (Exhibit 13) which evidence continued negotiation over the option clause.

28. Mr. Fleisher's next letter to me concerning negotiation over the Uniform Player Contract is dated January 17, 1967. (Exhibit 14) Mr. Fleisher requested:

> "...(3) That a complete review of the present contract be initiated with a committee of the player representatives so that a more equitable contractual arrangement (including the option provision), from the players' point of view, will be in effect prior to the mailing of new contracts for the year 1967-68. (Emphasis added.)

29. On March 2, 1967, during further negotiations leading to the first formal collective bargaining agreement of October 24, 1967, Mr. Fleisher wrote to me to summarize the "agreement by the owners to set up a committee to renegotiate the standard form contract to be mailed to each player for the ensuing season. In the renegotiation of the contract will be all provisions, including the reserve clause provision." (A copy of the letter of March 2, 1967 is Exhibit 15 to this affidavit.)

30. Some time before the signing of the first collective bargaining agreement on October 24, 1967, I received from Mr. Fleisher a listing of "suggested changes to standard player contract", which included the following statement by Mr. Fleisher with respect to the option clause, which at that time was paragraph 24 of the Uniform Player Contract:

> "... paragraph 24 is the reserve clause, and I have made clear my disagreement with this."

(A copy of these "suggested changes" is Exhibit 16 to this affidavit.)

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31. In the collective bargaining agreement of October 24, 1967 (Exhibit 2) increased pension benefits were granted to the players. As part of their negotiations in connection with that agreement, in or about March of 1967, the players had threatened to strike over the pension issue, and thus refuse to play in the scheduled NBA play-offs.

32. In March 1968, toward the expiration of the first collective bargaining agreement, Mr. Fleisher wrote to me, presenting the players proposals for incorporation in a new collective bargaining agreement. The proposals were "combined into three major areas (a) financial, (b) playing conditions and (c) a review of the Standard Player Contract [i.e., the Uniform Player Contract]." Under the heading "Standard Player Contract," proposal No. 9 was that "section 22 [the option clause] be revised." (A copy of the letter from Mr. Fleisher, dated March 11, 1968, is Exhibit 17 to this affidavit.)

33. At a meeting held on April 10, 1968 at the Roosevelt Hotel in New York, which several owners and I attended with counsel for the NBA, and Mr. Fleisher attended with some of the plaintiffs and other members of the Players Association, revision of the option clause was discussed. The Players Association recommended that after playing a certain number of years, a player should have an option to negotiate with and move to another team in the league as long as he accepted a pay cut for the first year after his

move. The NBA rejected this proposal; discussions on the subject continued into the summer of 1968 but did not result in any change in the option clause eventually included in the collective bargaining agreement of August 29, 1968. (Exhibit 3)

34. On May 9, 1969, as the term of the second collective bargaining agreement was ending, Mr. Fleisher forwarded to me the Players Association's demands for the negotiations which would ultimately lead to the third collective bargaining agreement, eventually signed and dated November 7, 1969. He proposed, this time, that the Uniform Player Contract be revised in the following ways:

> "4. Complete elimination of the paragraph relating to the reserve clause (paragraph 22).
>
> "5. Complete elimination of the right of assignment of a player's contract without the player's agreement and participation (paragraph 10)."

A copy of the letter, dated May 9, 1969, is Exhibit 18.

35. The Players Association ultimately put forth a less drastic proposal, whereby each player would agree for a period of five years from the date of his initial entry into the league to be bound to negotiate solely with his team or its assigns. It was proposed, however, that this limitation would not apply if the player did not receive a cumulative increase in salary of 40% over a three-

year period. (A copy of this Players Association proposal is Exhibit 19 to this affidavit.) The NBA counterproposed a clause with five consecutive annual options and a first refusal. (A copy of the counter-proposal is Exhibit 20 to this affidavit.) No change was agreed upon.

36. I am informed that in July 1970, during the collective bargaining which was to result in the collective bargaining agreement of October 8, 1970, Mr. Fleisher wrote a letter on his own letterhead to George G. Gallantz, general counsel for the NBA, suggesting language for a first refusal clause, in place of paragraph 22 of the option clause. (The letter, on which the date 7/23/70 was written in pencil after its receipt, is Exhibit 21 to this affidavit.)

37. On September 2, 1971, a letter was handed to Mr. Fleisher on behalf of the NBA proposing the elimination of the option clause in all future contracts except those entered into for one year with a rookie, but providing for a first refusal and compensation determined by arbitration. (The letter of September 2, 1971 is Exhibit 22 to this affidavit.) The Players Association, advised by present counsel for plaintiffs, refused even to discuss this proposal in a collective bargaining context.

38. The letter of September 2, 1971 also informed Mr. Fleisher that it was the decision of the Board of

Governors, subject to approval by the Players Association, that in order to exercise the option in paragraph 22 a club would have to tender a contract to the player providing for the same compensation the player had received in the preceding season, rather than the 75% permitted until then by paragraph 22. This change in paragraph 22, along with changes in the date of contract tender and date of effectiveness of that tender, was included in the fifth collective bargaining agreement between the NBA and the Players Association, dated April 5, 1972. In collective bargaining negotiations leading to that agreement the Players Association had proposed that the right of an NBA team to assign player contracts be limited. That proposal was not agreed to. The sixth collective bargaining agreement (Exhibit 7) was executed on November 15, 1972, without substantive change in paragraph 22.

39. The collective bargaining history detailed above is, I believe, a good example of the give and take of labor-management negotiations and the concessions which must be made by each side in return for particular gains. For example, the fundamental change in league structure which the players requested by modification of the draft procedure and the option and assignability clauses in the Uniform Player Contract was something the NBA was prepared to discuss, but not fully to capitulate on. That being the case, the NBA had to be prepared to make other concessions, not just financial, but in areas previously within the domain of management. Examples of such concessions are the agreements concerning the number of games to be scheduled in a given season, the number of teams to participate in a play-off, and, indeed, the size of the play-off pool --

which, before collective bargaining, had always been fixed by the Board of Governors unilaterally.

The Grievance and Arbitration Procedures

40. One of the most significant aspects of the negotiations between the NBA and the Players Association has been the development of the grievance and arbitration procedure which now exists. (Exhibit 7, Article XVI) This procedure enables the parties to turn to a neutral arbitrator without the recrimination that too often occurs when disputes involving employees are left to be determined by the Commissioner or some other person designated by the employers.

41. In fact, two of the recent cases put before the neutral arbitrator under the grievance procedure involved, at least in part, an interpretation of paragraph 22 of the Uniform Player Contract. In one, the Arbitrator ruled that the option had been properly exercised by California Sports, Incorporated (the NBA member operating the Los Angeles Lakers) with respect to player Wilton "Wilt" Chamberlain. (A copy of the Arbitrator's opinion and award is Exhibit 23 to this affidavit)

42. In another, the Arbitrator ruled that the Players Association could not schedule an "all-star" game to be participated in by NBA players unless those players received permission from their teams to play in such a game. The opinion (Exhibit 24 to this affidavit) made reference to, and was partly based upon, that part of paragraph 22 which refers to "the promise of the Player not to play otherwise than for the Club and its assignees."

Conclusion

43. I have always considered the relationship between labor and management in the NBA to be as good as any in professional sports. Unlike the National Football League and Major League Professional Baseball, the NBA has never had a player strike.

44. The employers and the players in the National Football League are now involved in a widely publicized dispute (which has, regrettably, resulted in a strike) over so-called "freedom issues," which I believe refer to demands by the players' union for elimination of football's option clause, the football commissioner's compensation policy and the right of National Football League teams to assign contracts of a veteran player. Because such a labor-management dispute goes to the very heart of the fundamental structure of any professional sports league, the parties to it have chosen the right forum for its resolution -- the bargaining table.

45. Attempts such as this suit, to effect collective bargaining changes not at the bargaining table but by use of litigation tactics are, I believe, not only an imposition on the courts, but also ill-advised and potentially destructive of so much that the NBA's members and the players have worked for.

J. Walter Kennedy

Sworn to before me this
25 day of July, 1974.

Notary Public

SIMON P. GOBERDIER
Notary Public, State of New York
No. 31-[illegible]
Qualified in New York County
Commission Expires March 30, 19[illegible]

- -

In the Matter of the Arbitration

between

CALIFORNIA SPORTS, INCORPORATED - OPINION and AWARD

and

WILTON N. CHAMBERLAIN

- -

The undersigned was duly selected by the parties to serve as arbitrator of the dispute described below.

Due notice having been given, a hearing was held in New York City, New York, on November 16, 1973. California Sports, Incorporated (hereinafter referred to as "CSI") was represented at the hearing by Alan I. Rothenberg, Esquire, its Attorney; Wilton N. Chamberlain (hereinafter referred to as "Chamberlain"), by Frederick P. Furth, Esquire, Thomas R. Fahrner, Esquire and Seymour S. Goldberg, Esquire, his Attorneys.[1] Pre-hearing briefs were filed. A reporter's transcript of the proceedings was supplied. All witnesses were sworn.

The question presented for decision by the Arbitrator, as formulated and agreed upon by the parties at the hearing, is:

1] Lawrence Fleisher, Esquire, appeared at the hearing representing the National Basketball Players Association, and Howard L. Ganz, Esquire, appeared at the hearing representing the National Basketball Association.

"Did the Lakers properly exercise the option provided for in Section 22 of the Uniform Player Contract to retain the services of Wilton N. Chamberlain for the 1973-1974 player year?"

Procedural Background

On September 26, 1973, Chamberlain announced that he had contracted with the San Diego Conquistadors of the American Basketball Association, to play and/or coach beginning with the 1973-1974 basketball season. CSI, which owns and operates the Los Angeles Lakers (hereinafter referred to as "Lakers"), a member of the National Basketball Association (hereinafter referred to as "NBA"), commenced an action in the Superior Court of the State of California for the County of Los Angeles. In that action it sought a preliminary and a permanent injunction restraining Chamberlain from playing for the San Diego Conquistadors on the ground that under Section 22 of the NBA Uniform Player Contract that contract "shall be deemed renewed or extended for the period of one year,"[1] i.e., for the basketball playing season 1973-1974. Chamberlain resisted on the ground that CSI had not properly exercised its option to retain his services as provided in Section 22 of the Uniform Player Contract. The Superior Court ordered this aspect of the dispute to be arbitrated.

1/ Chamberlain played with the Lakers for the 1968-1969, 1969-1970, 1970-1971, 1971-1972 and 1972-1973 basketball seasons under contracts which will be described, infra.

The Labor Relations Committee of NBA ruled that the option described above had been properly exercised by CSI under said paragraph 22 and its decision was appealed to arbitration.

Facts

On June 10, 1968 CSI and Chamberlain entered into a "Letter Agreement" under which, inter alia, Chamberlain agreed to sign a standard (uniform) NBA player contract for three years (the 1968-1969, 1969-1970 and the 1970-1971 basketball seasons). The Letter Agreement provided that "As compensation for such services" Chamberlain will receive $200,000. per season. That Letter Agreement also provided that CSI would "select and assist Chamberlain to enter into unspecified business ventures that would shelter said sum from all income taxes; and that CSI would cause its sole shareholder, Jack Kent Cooke ("Cooke"), to sell Chamberlain $100,000. worth of stock in Jack Kent Cooke, Incorporated, another corporation owned by Cooke, in return for Chamberlain's promissory note in that amount but with his [Chamberlain's] liability limited to the security afforded Cooke by a pledge of stock."[1] In reference to this transaction, paragraph Third C

1] Quoted from Joint Exhibit No. 1, a "Joint Statement of Facts" in the record of this case; pp. 1, 2.

of the Letter Agreement provided that "On or about the due date of the note,[1] Player will have, at his sole discretion, the right to either pay the note and retain ownership of the stock, free and clear of any pledge or encumbrance, or may deliver and return the security in satisfaction of any and all obligations to otherwise pay said note."[2]

Contemporaneously with the Letter Agreement on June 10, 1968, Chamberlain and CSI entered into an "Option Agreement" to extend that Letter Agreement to cover the 1971-1972 and 1972-1973 basketball seasons. The options in that instrument were never exercised by Chamberlain and any rights or duties provided therein expired on April 30, 1971. However, it is noted that it provides that "This Option Agreement does not include any right to additional stock or loan."

On October 21, 1968 the parties entered into a "Sale of Stock and Pledge Agreement." Apparently, by this date it

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1] A note was signed by Chamberlain on October 21, 1968 in the amount of $100,000. with a due date of December 31, 1971. It provides that it is secured by a "Sale of Stock and Pledge Agreement" (also dated October 21, 1968) and that "Chamberlain shall not be personally obligated on this note and the sole method of enforcement shall be as set forth in said Pledge Agreement" (Joint Exhibit No. 1 B).

2] Seymour Goldberg, Chamberlain's Attorney in the transaction described, testified that Chamberlain at any time up to the due date of the note, had the right to "purchase the stock from Cooke" (Tr. pp. 17, 18); or stated otherwise, to demand that Cooke sell all or any part of the stock standing as security for payment of the note and remit the gains to Chamberlain.

was understood that the stock purchased and held as security for payment of the $100,000. note was to be H. & B. American Corporation stock rather than Jack Kent Cooke Corporation stock. The said agreement provided that Cooke sold to Chamberlain 5,264 shares of H. & B. American Corporation stock[1] owned by him; that such shares shall remain of record in Cooke's name until the promissory note is paid and held as security; that cash dividends, et cetera, shall be applied by Cooke to the obligation evidenced by the note; and that in the event of default on the note Cooke may sell the shares and hold the proceeds free of any claim by Chamberlain. Any surplus of receipts over the amount of the obligation evidenced by the note was to be credited to Chamberlain. Paragraph 4 stated that Chamberlain purchased the 5,264 shares as an "investment."

At this point, it may be desirable to summarize, briefly, as follows: Chamberlain agreed to play for the Lakers for three years (through the 1970-1971 basketball season) for a stated salary of $200,000. per year (with such amount unburdened by taxes inasmuch as CSI undertook to supply tax shelters) and Chamberlain, having signed a note for $100,000., became the equitable owner of 5,264 shares of H. & B. American

1] Valued, apparently, at $100,000.00.

Corporation stock of that value to be held by Cooke as security for the payment of the note. Under this transaction, Chamberlain would get the stated compensation ($200,000.) tax-free and would be entitled, on or before December 31, 1971, the due date of the note, to whatever value the stock might have in excess of his "loan." If a sale of the stock on the due date of the note did not yield the amount of the note, Chamberlain would not be personally liable for the difference.

In pursuance of the Letter Agreement of June 10, 1968, on September 26, 1968 Chamberlain signed an NBA Uniform Player Contract "for the term of three years from the 1st day of October 1968, 1969 and 1970." Section 2 of the contract provided that "The Club agrees to pay the Player for rendering services described herein the sum of $200,000. per year plus other considerations" (Joint Exhibit 1-E).

On or about September 17, 1970, H. & B. American Corporation was acquired by Teleprompter Corporation on the basis of an exchange of 3 1/8 shares for 1 share of these corporations, respectively. In exchange for his 5,264 shares of H. & B. American Corporation shares, Chamberlain received 1,683 shares of Teleprompter Corporation.

At the end of the 1970-1971 basketball season (the third year of the contract), Chamberlain (as stated above) did not exercise his rights under the 1968 Option Agreement. Also, so far as appears, at the end of the 1970-1971 season the Lakers did not seek to exercise their option to hold over Chamberlain for another playing year by proffering a contract pursuant to the provisions of Section 22 of the Uniform Player Contract.

In August and September, 1971 there were a number of meetings between Chamberlain and his representatives and CSI (the Lakers) and their representatives with a view to negotiating a new arrangement for the ensuing seasons. During the period of these negotiations, Cooke continued to hold the Teleprompter Corporation shares as security for repayment of the note due a few months thereafter.

In the course of the negotiations a wide variety of "packages" were discussed. At several times, it appears, each party noted conditional acceptance of one or another of the terms of a deal proposed by the other. On September 6, 1971, a memorandum of discussion was signed by Mr. James Lacher, a Vice President of CSI and a representative of Cooke, and by Seymour S. Goldberg, Esquire, Chamberlain's Attorney. This memorandum stated:

"1. Salary of $200,000 per year with shelter provided.

"2. No trade, no cut contract.

"3. Wilt [Chamberlain] can elect the following:

"(a) Sell to JKC [Cooke] at $85 1/3 of the 1684 [Teleprompter] shares taking the profits. Balance can be sold at any time.

"(b) JKC will co-sign on a note to purchase 66,666.67 of stock [Teleprompter]. Wilt to pay interest. JKC to hold stock as collateral.[1]

"4. Participation in the venture profits as per previous agreement."

Shortly after the date of that meeting and on September 31, 1971, Mr. Lacher wrote to Mr. Goldberg stating that "Mr. Cooke has agreed to repurchase 561 shares at a gross price of $85. per share" and enclosing a check in the amount of $14,351.67. The letter indicated that the gross price was $47,685.00 and that this amount, less $33,333.33 "which Wilt was to pay for these shares" came to $14,351.67, the amount of the check and the "Price to purchase option rights on 561 shares." The letter concluded with the statement that

"After the above transaction, Wilt has options to purchase 1,123 shares for $66,666.66"[2]

and also,

1] Apparently, Chamberlain regards the memorandum as affording him a right to "elect" both "(a)" and "(b)"; Cooke and CSI regards "(a)" and "(b)" as alternatives in a provisional deal never really consumated and merged into a formal document subsequently executed.

2] Thus, in late September, 1971, Chamberlain's indebtedness on the $100,000. note was reduced one-third by the sale of one-third of the pledged shares.

"The above repurchase of Wilt's 'Option Rights' on 561 shares and disposition, if any, of the 'Option Rights' on the remaining 1,123 shares will be detailed in formal legal agreements to be executed by Wilt, CSI and JKC in the near future."

On September 9, 1971 (a day following the meeting between Messrs. Lacher and Goldberg which resulted in their signing the memorandum described and quoted above, and prior to the stock sale transaction described above[1]), Chamberlain signed another NBA Uniform Player Contract for "two years from the 1st day of October 1971" (1971-1972 and 1972-1973) for "$200,000 per year plus other considerations." Again, a collateral "Agreement" was signed on November 7, 1971. This "Agreement" (Joint Exhibit 1 G) provided that a "standard" player's contract (which had already been executed) would be signed for two basketball seasons as described and (in Section "Second" provided

"As compensation for said services, Player shall receive the sum of Two Hundred Thousand Dollars ($200,000.00) per season. Said compensation shall be payable in Four (4) equal consecutive monthly installments * * * . " (Emphasis supplied.)

Paragraph "Third" stated

"It is specifically understood * * * that the entire compensation shall be due and payable to the Player as spelled out in Paragraph Second * * * . " (Emphasis supplied.)

1] The Joint Stipulation of Facts (Joint Exhibit 1) recites that the repurchase of one-third of the shares of stock took place on or about September 13, 1971.

Paragraph "Fifth", after reciting that Chamberlain was "obligated" to Cooke for $66,666.67, provided that CSI will extend the due date on the note (from December 31, 1971) to December 31, 1973; that Cooke holds 1,123 Teleprompter Corporation shares as security for payment of the note and

> "At any time prior to the due date, Jack Kent Cooke agrees to purchase said shares of Teleprompter stock from Player at the price at which said stock last traded [sic.] on the American Stock Exchange immediately prior to Players election to sell." 1]

Also,

> "If Player elects, he may pay to Jack Kent Cooke, the amounts due on the note on or before December 31, 1973, and receive his security, which security shall be freely transferable by the player."

At the end of March, 1972 James Lacher, Vice President and Treasurer of CSI, wrote to Seymour S. Goldberg, Chamberlain's Attorney, enclosing a check for $69,777.83 to cover a "repurchase of 'Option Rights' on 4,492 shares of Teleprompter stock."2] In explaining the amount of the check, he indicated that $136,444.50 was the gross price of the 4,492 shares at $30.375 per share; and that $66,666.67 deducted from this gross price was the "amount that Wilt was to pay for these

1] This was a right given to Chamberlain not specifically expressed in the 1968 documents but which the record establishes that Chamberlain possessed. (Tr. pp. 17, 18.)

2] On March 24, 1972 a stock dividend of Teleprompter Corporation had increased the original 1,123 shares to 4,492 shares.

shares"—that is to say, the amount on which Chamberlain was still obligated on the $100,000. note.

Accordingly, the outstanding obligation of Chamberlain to Cooke on the note ($66,666.67) was extinguished by Cooke purchasing the remaining shares held as security for the indebtedness evidenced by the 1968 note for $136,444.50 and Cooke remitted as gains on the transaction, to Chamberlain, the sum of $69,777.83.

Negotiations again took place in early October, 1972. A variety of propositions are referred to, briefly, in notes kept by Lacher (Chamberlain Exhibits No. 2 e and 2 f). These notes are unsatisfactory proof of the character of any bargain claimed to have been struck. The negotiations culminated in a formal instrument entitled "Addendum to Agreement" which was signed by CSI and Chamberlain on October 16, 1972.

In this document it is said that its purpose "is to modify the Agreement dated September 9, 1971 * * * in certain particulars only" and that it would remain in full force and effect except as modified therein.

First, the Addendum provided that any reference to the 1972-1973 basketball season in the 1971 Agreement is to

be "modified" by deletion. Then it stated that "the compensation" for the 1971-1972 season shall remain at $200,000. and

> "In addition and in compensation for other consideration spelled out herein, Company will pay to Player by and for his participation in the 1971-72 season the additional sum of Two Hundred Thirty Thousand Dollars ($230,000.00) in cash." 1]

Next, it stipulated that "Compensation for the 1972-73 season shall be at the rate of Four Hundred Fifty Thousand Dollars ($450,000.00) for said season." (Emphasis supplied.)

Next, it deleted and terminated the effects of the provisions in the 1971 collateral agreement designated Fourth,[2] Seventh,[3] Eighth,[4] and Ninth.[5]

1] The net effect of this verbiage was to give Chamberlain retroactive compensation of $230,000. in cash in addition to the $200,000. he had received as "compensation" for his services in the playing season which had terminated five or six months prior to the date of the Addendum.

2] Business ventures for tax shelters.

The "Joint Statement of Facts" (Joint Exhibit No. 1) states that "The tax shelter compensation features of Chamberlain's agreements with CSI proved to be extremely cumbersome as an approach to compensation, and Cooke, along with other officers and employees of CSI (as well as CSI's and Chamberlain's attorneys) were continually beset by intricate tax and financing problems posed by Chamberlain's personal tax shelter investments. * * * . "

3] Obligations of Company if tax shelters not provided.

4] Right of Company to participate in tax audits of Chamberlain's accounts.

5] Term of contract as depending on possible tax assessments.

In "4", the Addendum stated

> "As a matter of record, the provisions of Paragraph Fifth [in the 1971 collateral Agreement] have been satisfied and there is no further obligation to Jack Kent Cooke by player and there is no further obligation to player under the provisions of Paragraph Fifth.[1]] (Emphasis supplied.)

Finally, Paragraph 5 of the Addendum provided that paragraphs in the September, 1971 Agreement not mentioned in the Addendum remain in effect.

Section 22 of the Uniform Player Contract provides:

> "On or before September 1 next following the last playing season covered by this contract and renewals and extensions thereof, the Club may tender to the Player a contract for the next succeeding season by mailing the same to the Player at his address shown below, or if none is shown, then at his address last known to the Club. If the Player fails, neglects or omits to sign and return such contract to the Club so that the Club receives it on or before October 1st next succeeding, then this contract shall be deemed renewed and extended for the period of one year, upon the same terms and conditions in all respects as are provided herein, except that the compensation payable to the Player shall be the sum provided in the contract tendered to the Player pursuant to the provisions hereof, which compensation shall in no event be less than 100% of the compensation payable to the Player for the last playing season covered by this contract and renewals and extensions thereof.

1] Paragraph Fifth in the 1971 Agreement, it will be recalled, refers to a balance due on the original note; an extension of its due date from May 31, 1971 to May 31, 1973; Cooke holding 1,123 shares of Teleprompter stock as security for payment of the note; and that at any time prior to the due date, Cooke agrees to purchase the shares held as security at market price, as defined, the difference to be credited to Chamberlain.

> "The Club's right to renew this contract, as herein provided, and the promise of the Player not to play otherwise than for the Club and its assignees, have been taken into consideration in determining the amount of compensation payable under paragraph 2 hereof." (Emphasis supplied.)

For some time, unspecified, Section 22 had provided that the compensation for the additional "option year"

> "shall in no event be less than 75% of the compensation payable to the Player for the last playing season."

At a special meeting of the Board of Governors of NBA held in Chicago, Illinois on Wednesday, August 4, 1971, the following motion was made and passed:

> " * * * the 75% clause in paragraph 22 of all Uniform Player Contracts now in force or thereafter [sic.] entered into shall be deemed unenforceable so that the option contained in said paragraph 22 shall be exercisable only upon an offer of compensation equal to the compensation payable to the players for the last season covered by the contract." (Emphasis supplied.)

Apparently, this resolution was executed by substituting 100% for 75% in the Uniform Player Contract.

CSI claims to have exercised the option afforded by Section 22 enabling it to retain the services of Chamberlain for another year by tendering to Chamberlain, on or about July 1, 1973, a new Uniform Player Contract and collateral agreement

for the 1973-1974 (current) basketball season.

The Uniform Player Contract tendered (Joint Exhibit 1 L.) in section 2, refers to compensation for Chamberlain's services as $450,000.00. The collateral Agreement (Joint Exhibit 1 M) which was signed by CSI on July 31, 1973 but not by Chamberlain, provides that "As compensation for said services player shall receive" $450,000.00. It also provides that "the entire compensation shall be due and payable to Player as spelled out in Paragraph Second, so long as Player makes himself available to perform to the best of his physical ability." It contains no reference to any stock option rights.

Chamberlain did not accept that tender and regards it as not having met the conditions in section 22.

Discussion

The question which the Arbitrator, ultimately, must answer, is easily stated: Was Chamberlain held over for another year by CSI by the tender it made under section 22? But before that question can be confronted, one must cope with the curious structural and grammatical organization of section 22; and after mastering an understanding of that provision (which has been the source of some dispute and litigation), the Arbitrator must determine whether the facts in the case demonstrate that the imperatives of section 22 have been satisfied. Those facts are a series of financial transactions represented by documents which do not always set forth with incandescent lucidity the significance of what was taking place.

First, as to section 22: Its apparent simplicity is deceptive. The more one reads it, the more (or less) one finds. In its opening sentence it tells us that a Club may tender a "contract" to the Player for the next succeeding season following the last season for which he contracted by tendering "a contract."[1] The second sentence starts out by informing

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1] At this point the section does not disclose what "a contract" must provide. There is also some confusion generated by a lack of distinction between the "contract" which is expiring and the "contract" which is being offered to hold over the player for another contract year.

us that if the Player does not accept the tender of "such contract" within the time specified, "this contract" (for the season last contracted for) shall be extended for the period of a year on the same terms and conditions. Then by way of proviso ("except") it is said that the "compensation" "shall be the sum provided in the contract tendered[1] to the Player pursuant to the provisions hereof." It is noted that reference is made to "compensation" as being a "sum provided." The "sum provided", of course, is to be found, normally, in section 2. The provision goes on to state that the "compensation" provided for in the tendered contract "shall in no event be less than the compensation payable to the Player for the last playing season." (Emphasis supplied.)

Does this mean that in determining whether there has been an effective tender, one is to look exclusively to section 2 of the expiring Uniform Player Contract (which sets forth "the sum" that the Player is to receive for his services for the stated term of the contract) and then to determine whether the tendered contract recites precisely the same "sum"?

1) I take this to mean that the sum or pecuniary amount set forth in the tendered or offered contract as compensation for the ensuing playing season shall be the sum provided in the expiring contract. The terms used do not express this, literally, but the intention is manifest.

I think not! Although the draftsman has expressed himself with less than complete clarity, it seems to me that the provision expresses the intention that, for the holdover (option) basketball season, the Player must be assured that he will receive "compensation" equal to 100% of what the Club had contracted to compensate him for his services in the last contracted-for basketball season.

This means to me, at the least, that the amount or "sum" of declared monetary compensation stated in section 2 of the standard expiring contract cannot be reduced in the contract tendered for holdover purposes.[1] But "compensation" can take many forms other than the stated salary, the amount of which should be inserted in section 2. What other forms it might take need not be explored here. However, there is no reason to doubt that the "compensation" referred to in section 22 could embrace the kind of secured loan and pledged stock transaction which took place in 1968. It might well encompass forms of consideration which go beyond "the sum" or amount of dollars stipulated in section 2. For example, in 1968, as partial consideration for making his unique services available, Chamberlain was assisted in making a stock "no-risk" "investment."

1] Atlanta Hawks Basketball, Inc. v Southern Sports Corporation (NDNC, January 14, 1971).

This was done by his "purchase" of 5,264 shares of stock of H. & B. American Corporation owned by Cooke and by his delivery to Cooke of his note for $100,000. due December 31, 1971. In effect, Chamberlain was being given a "free ride" on this investment which was a valuable consideration for his commitment to make his services available in the first three seasons of the relationship starting with the 1968-1969 season. It would seem that had events not occurred as they did, but, hypothetically, on the original due date (December 31, 1971) in mid-term of the last basketball season contracted for by the 1968 agreements, had Chamberlain "resold" the stock to Cooke and had he received gains from the transaction, such gains would have been "compensation" in the last playing season (1970-1971), within the meaning of section 22. Accordingly, any tender made at the end of the 1971-1972 playing season for a holdover "option" season, could only be valid if the tendered contract included such gains as compensation to Chamberlain in the "last playing season."

No tender was made to retain Chamberlain's services for the season following the 1970-1971 basketball season.

However, events did not transpire in that way. Prior to the due date on the note and in late September, 1971, Cooke

"repurchased" 561 shares from Chamberlain which yielded to Chamberlain gains of $14,351.67. This had the effect of reducing his indebtedness on the note to $66,666.67. This fact was reflected in the Agreement relating to the 1971-1972, 1972-1973 seasons signed shortly afterward on November 7, 1971, which stated that

> "At the present time Player is obligated to Jack Kent Cooke in the amount of * * * ($66,666.67)."

That same instrument extended the due date of the note (in respect to the balance stated) to December 31, 1973.

Again, if events had not transpired as they did, but the parties entered into a one year arrangement (1971-1972) instead of a two year arrangement, and Chamberlain had liquidated his "investment" and had closed out his liability on the 1968 note by requiring Cooke to purchase the remainder of the stock held as security in February, 1972, it might be argued, with some force, that any profit on the stock deal at such a time constituted "compensation" for the 1971-1972 season within the contemplation of section 22. Accordingly (following through with this hypothesis), any contract tendered, under section 22, to hold over Chamberlain for the 1972-1973 season, to have been effective, would have had to include as "compensation" such gain received in the course of the 1971-1972 season.

However, this hypothetical state of facts, also, did not occur. Instead, on March 28, 1972,[1] Cooke repurchased the remainder of the shares held as security for payment of the note. The purchase price (4,492 shares at $30.375 per share) yielded a gross of $136,444.50. Deducting from this, $66,666.67 (the balance owing by Chamberlain on the 1968 note), resulted in Chamberlain receiving a check on or about March 28, 1972 in the amount of $69,777.83. This extinguished Chamberlain's indebtedness on the 1968 note for $100,000. and at the same time liquidated his "investment" and whatever stock option rights he possessed by virtue of the 1968 contracts and their renegotiation.

Was the receipt of this $69,777.83 "compensation" payable "to the Player for the last playing season covered by this contract [1972-1973] and renewals or extensions thereof"[2] under section 22 for the purpose of a tender and holdover for the 1973-74 playing season? At this point the crucial question in the case emerges and must be confronted.

The Uniform Player Contract bearing the date September 9, 1971 provides for a yearly rate of compensation of $200,000.

1] At a time antecedent to "the last playing season [Fall of 1972 to Spring of 1973] covered by this contract and renewals and extensions thereof." (Section 22.)

2] Emphasis supplied.

It is noted, however, whatever the reason may be, that section 22, although it refers to a renewal of the contract "for the period of one year," in its reference to the terms and conditions on which the exercise of the Club's holdover option could occur, speaks not of years but of "last playing season."

Thus, we can assume, for the purposes of the discussion, that Chamberlain's "compensation" (for section 22 holdover purposes) in the 1971-1972 season included the $69,777.83 he realized on the sale to Cooke of 4,492 shares of Teleprompter Corporation. But this realization of gains did not occur in the course of the 1972-1973 playing season which was the last season covered by the prior agreements. Indeed, as stated above, a renegotiation of the terms of the relationship was accomplished for that 1972-1973 season in the Addendum to Agreement dated October 16, 1972. In addition to awarding Chamberlain, retroactively, an additional $230,000. in cash ("for his participation in the 1971-1972 season") and compensating him at the rate of $450,000. for the 1972-1973 season, the Addendum stated that the provisions of paragraph Fifth of the 1971 Agreement "have been satisfied and there is no further obligation" to Cooke by Chamberlain or by Chamberlain to Cooke "under the provisions of Paragraph Fifth" (of the 1971 collateral Agreement).

The consequence of this has to be that whatever Paragraph Fifth of the November 7, 1971 Agreement had provided as "compensation" (within the meaning of section 22) for the 1972-1973 playing season was wiped out and extinguished.[1] This included the extension of the due date in the 1968 note inasmuch as the note itself had been paid up in full in March of 1972 before the 1972-1973 playing season began. It also included the cancellation of provisions as to Cooke's undertaking to purchase the remainder of the stock held as security at market price and to "deliver the difference to the Player in cash." It also included the Player's election to pay off the 1968 note before the extended due date on December 31, 1973 and to hold the security himself. By the October 16, 1972 Addendum, in effect, the complicated financial transactions between Chamberlain and the Lakers were placed on a strictly cash basis. The documents which evidenced their relationship no longer recognized any residual stock options or "investment" rights. What they did evidence was a bargain to compensate Chamberlain for his services in the sum of $450,000.00 The 1971 Uniform Player Contract, to be sure,

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1] Indeed, the Addendum in 1972 expressly provided that Paragraph Second of the 1971 collateral Agreement "is hereby modified to delete any reference to the 1972-1973 basketball season." (Par. 1.)

recited that the sum set forth (in Section 2) was "$200,000.00 per year plus other considerations"; but this was superseded and wiped out by the Addendum.

In other words, even if the actions of the parties should be regarded as having contemplated the eventuality that avails and profits of the loan-stock deals and transactions could have resulted in "compensation" to Chamberlain in the 1972-1973 playing season, this is not what took place. In fact, and by operation of the Addendum of October 16, 1972, nothing was left of the loan-stock deal when the parties signed the Addendum that could produce or generate "compensation" for Chamberlain during the 1972-1973 playing season:- the last playing season before CSI invoked its option rights for the current 1973-1974 playing season.

Accordingly, when CSI made a timely tender, in 1973, to Chamberlain of a Uniform Player Contract for the term of one year from September 1, 1973 for $450,000.00, CSI conformed to and complied with the condition expressed in section 22 that the tender "shall in no event be less than the compensation payable to the Player for the last playing season covered by this contract and renewals and extensions thereof."

In the brief filed on behalf of Chamberlain it is said that

> "Under the 1971 agreements, as modified in 1972, Chamberlain received a cash salary of $450,000 for the 1972-1973 season, plus stock rights which when exercised, yielded a profit of $69,777.83 for the 1971-72 and 1972-73 seasons, or $34,888.42 for the 1972-73 season—or a total compensation of $484,888.42 for 'the last playing season covered by' the 1971 Uniform Player Contract."

Presumably this is based on the theory that when Chamberlain in late March, 1972, realized $69,777.83 on a sale of the remainder of the Teleprompter stock which Cooke held as security for the payment of the 1968 note, one half of this amount is properly allocable to the playing season which commenced seven months later in October, 1972. The reasons for regarding these gains, obtained by the then sale of the stock, as "compensation" for the playing season which was months in the future, are obscure to say the least. What the parties were about was the winding up and the liquidation of a loan-stock security transaction constituting a "free ride" investment for Chamberlain which was a part of the consideration for performing services under the 1968-69, 1969-70 and 1970-71 agreements. The fact that the due date of the note was extended (which meant that the liquidation of the loan could

be accomplished by selling stock after the original due date) does not mean that the parties were, in reference to that matter, bargaining with respect to "compensation" for services for the ensuing playing season. At that time, in addition to the Club-Player relationship, they were locked in the relationship of debtor and security holder. And even if the point be conceded, it is difficult to understand how stock gains realized in March, 1972 in a transaction that wiped out a 1968 indebtedness and constituted an execution of stock-option rights established in 1968 could be regarded as part of the quid pro quo for the rendition of services in the 1972-1973 playing season. There is absolutely nothing to show that the $69,777.83 was prepayment for services to commence seven months hence. There is a great deal to show that the payment of this amount resulted in the liquidation of an indebtedness and stock options that related to the first three seasons for which Chamberlain contracted to play for the Lakers.

Chamberlain's brief argues that the original $100,000. loan was calculated on the basis of $33,333.33 worth of stock for each year of the initial three year contract term. There is no basis in the record, whatever, for making a find-

ing to this effect. It is then said,

> "Accordingly, it was made clear during the negotiations that preceded the 1971 Agreements 1] that since the agreements would obligate Chamberlain to play for the Lakers for a basic term of two years, he should have additional rights with respect to $66,666.66 worth of stock or $33,333.33 worth for each of two years. * * * .
>
> "It is Chamberlain's contention in this proceeding that because he was given the above-described rights with respect to $100,000 worth of stock under the three-year 1968 agreements, and with respect to $66,666.66 worth of stock under the two-year 1971 agreements, he should have received similar rights with respect to $33,333.33 worth of stock—or cash equivalent to the value of such rights—in addition to the $450,000.00 salary specified in the one-year contract tendered to him by CSI on July 31, 1973." 2]
> (Emphasis supplied.)

The argument made is ingenious and resourceful but not persuasive for the reasons set forth above at some length. If additional stock rights were given to Chamberlain in 1971, they were extinguished utterly by the provisions of the Addendum of October 16, 1972. His gains made months before the 1972-1973 playing season started cannot be attributed or allocated to services to be rendered in the next 1972-1973 playing season. In the absence of anything in the Addendum affirmatively providing that gains from the stock held by Cooke

1] Emphasis supplied.

2] Chamberlain Pre-hearing brief, pp. 10, 11.

should be regarded as compensation for the next playing season, no finding favorable to Chamberlain on this point can be made. What Chamberlain was to receive and did receive in the 1972-1973 playing season is what the 1972 Addendum provided.

The extension of the term of the 1968 note resulted in greater gains and avails to Chamberlain than he would have received had he liquidated the transaction before the 1971 Agreement had been signed because the stock, apparently, increased substantially in value. Accordingly, the extension of the due date in the note was a thing of value to him when the 1971 Agreement was negotiated. It enabled him to gamble on the stock going up in price. However, even if the extension of the due date of the note was a valuable consideration because it gave Chamberlain the opportunity to make greater capital gains than he would have made had the due date not been extended, the stock having been sold in March, 1972, and the stock option rights having been extinguished in the Addendum, the capital gains would not have been "compensation" for a playing season that commenced in October, 1972 and ended in the Spring of 1973.

On September 8, 1971 the parties signed a memorandum that

"Wilt can elect the following:

"a) Sell to JKC [Cooke] at $85½ of his 1684 shares taking the profits. Balance can be sold at any time.

"b) JKC will co-sign on a note to purchase $66,666.67 of stock (Teleprompter). Wilt to pay interest—JKC to hold stock as collateral."

On behalf of Chamberlain, it is argued that the "election" quoted demonstrates that the 1971 deal contemplated that the compensation for the 1971-1972 and 1972-1973 playing season, in addition to "the sum" set forth in section 2 of the standard contract called for another loan of $66,666.66 for two years which would be the pro rata equivalent of the $100,000. transaction negotiated for three playing seasons. In other words, it is claimed that for 1971-1972, Chamberlain was to get a loan of $33,333.33 and a similar amount for the next playing season, 1972-1973, together with stock options constituting such an "investment" as he was able to make in 1968. Accordingly, it is argued that, at the least, the contract tendered for the 1973-1974 playing season, in addition to the $450,000. "sum," should have offered for one year, the same kind of stock-option-loan-security-investment deal, pro rata, as Chamberlain was afforded for the first three playing seasons starting in 1968.

One short answer to the argument is that whatever was understood in the negotiations and embodied in signed memoranda was merged into and superseded by the formal 1971 and 1972 agreements subsequently signed. The memorandum quoted above may or may not be an "agreement." It is not worded as such. It could be merely an attested record of provisional and conditioned understandings, not necessarily binding.

At any rate, if the memorandum actually contemplated the possibility that there would be another $66,666.66 transaction for three years, so far as the record reveals, Chamberlain never made the election. He did not demand any stock valued at $66,666.66 or offer to make a new note for which pledged stock would stand as security for payment at <u>any time</u> during the 1971-1972 or 1972-1973 playing season nor, so far as appears, at any time thereafter until the litigation commenced.

Counsel for Chamberlain argues that when the two-year contract was signed in 1971, in addition to obtaining an extension on the due date of the 1968 note, Chamberlain received additional valuable stock option rights. The record offers no support for this argument. To the contrary, it provides the

strongest kind of evidence that the only stock option or investment rights that Chamberlain had after the 1971 two-year playing agreements were signed was a residuum or remainder of the 1968 deal. He was afforded an additional period of time to cash in on his 1968 stock investment. Recognition of the continued vitality of those rights in the 1971 formal documents is an entirely different thing than the creation of new stock option rights and investment opportunities. If such new rights or opportunities were granted, reference to them is not to be found in the 1971 standard or collateral agreements. The argument appears to be based upon assumptions grounded on the negotiations which preceded the preparation of the formal documents which provided for the relationship in the next two playing seasons. The 1971 documents added no new stock option rights or investment opportunities and the 1972 Addendum memorialized the end of the 1968 deal.

Would Chamberlain have been content, after having received $200,000. per season with tax shelters and a stock investment deal with substantial capital gains for the first three seasons of his Lakers' arrangement, to enter into a $450,000. cash deal for the second of the two additional seasons (1972-73) without tax shelters and without addition-

al stock investment opportunities? Is it not more reasonable to assume that when his compensation "sum" went up $450,000. but without tax shelters, he would have expected for the last two seasons a stock investment arrangement on a pro rata basis equivalent to what he had in 1968? The answer has to be: perhaps. However, this is not what the documents provided for and the conduct of the parties in the 1971 and 1972 contracts is not consistent with such a speculation! The best evidence of the bargain which the parties struck and by which they are bound is the agreements they signed. The Arbitrator has no power to reform or to correct the contracts to express what one of the parties insists might have occurred or might have been done. This decision is based on what the documentary exhibits actually provided as to the reciprocal rights and duties of the parties, what the record reveals as to their conduct, and what those facts mean in light of what is believed to be a reasonable reading of section 22.

For the reasons set forth in the accompanying Opinion, it is

AWARDED, as follows:

The record shows to my satisfaction that CSI made a tender to Wilton N. Chamberlain in conformity with the requirements of section 22 of the Uniform Player Contract signed by CSI and Chamberlain on September 9, 1971 (as modified or amended).

Dated:
New York, New York
December 4, 1973

Peter Seitz
Peter Seitz, Arbitrator

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STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

On this 4th day of December 1973, before me personally appeared PETER SEITZ, to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Irene Buga
Notary Public

IRENE BUGA
Notary Public, State of New York
No. 03-0484925
Qualified in Bronx County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

REPLY AFFIDAVIT

70 Civ. 1526 (RLC)

AMERICAN BASKETBALL ASSOCIATION, et al.,

Counterclaimants and Cross-claimants,

-against-

OSCAR ROBERTSON, et al.,

Counter-defendants,

and

NATIONAL BASKETBALL ASSOCIATION, et al.,

Cross-defendants.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

LAWRENCE FLEISHER, being duly sworn, deposes and says:

1. I make this affidavit in further support of plaintiffs' motion filed March 11, 1974 to certify this case as a class action. I must correct certain factual inaccura-

cies contained in the affidavit of J. Walter Kennedy, dated July 23, 1974, and in the NBA's memorandum of law, dated July 25, 1974, both filed by the NBA defendants in opposition to the class.

2. I am certain that the Court is fully aware that I am general counsel to the NBA Players Association and represent certain individual players, and hope that the Court does not agree with the NBA's attempt to label me as "disingenuous" (NBA Brief 2) for not stating each identifying fact about me in every affidavit I file. I have been introduced to Judge Carter and before him Judge Tenney, who have been told who I am precisely, at numerous status conferences, in oral argument at hearings and in numerous affidavits filed herein, beginning with the first one dated April 17, 1970, upon which in part the preliminary injunction was granted.

3. As to this motion, the ABA has conceded the existence of plaintiffs' class in all respects, and even seeks to assert claims against the named plaintiffs as representatives of an alleged defendants' class of NBA players. Hence, only the NBA has challenged the class.

4. In making that challenge, the NBA relies primarily on a theory that the named plaintiffs have a potential conflict with the class and cannot adequately represent them. This theory is founded first on the notion that because there are now "past" (retired) NBA

players in the class -- they all "may" no longer seek the same relief in the same degree.

5. That position ignores that the NBA delayed the class determination in this action until now and itself created the alleged "past-present" dichotomy, as explained in detail in the plaintiffs' accompanying Reply Memorandum.

6. While the owners speculate that "potentially" or "perhaps" the "past" players may not go along with the desires of "present" players, the sworn affidavits of the "past" players annexed hereto in support of the class state that these "past" players themselves see no conflict at all in being represented by present players and the "present" players who are named plaintiffs see no conflict in representing "past" players. The NBA's unsupported speculations should not be permitted to override the expressed desires of the members of the class (Reply Mem. 9-14).

7. Moreover, the NBA neglects to mention that three of the named plaintiffs are themselves now "past" players and stand ready, willing and able to represent the interests of "past" players, even assuming contrary to fact (or if it is ever established by proof) that an actual conflict does exist between past and present players. While the players believe that all the named plaintiffs can represent all the class members: (a) Joe Caldwell, a former NBA player who now plays in the ABA can represent the past NBA players, particularly those who later played

in the ABA and (b) McCoy McLemore and Thomas Meschery, as former NBA players who never played in the ABA can represent other former players who never played in the ABA (Reply Mem. 14, 20).

8. The argument that the NBA might be "de yed" by a damage judgment in this case is typically unsupported by not one single fact. The facts are to the contrary. The NBA defendants receive multi-million dollars each year from their lucrative television contract. The contract signed with ABC in 1970 was for $17 million and the current contract with CBS is for $27 million. The most recent sale of a single franchise was for a reported $9.1 million; and the cost of a new franchise in the NBA rose from $3.8 million in 1970, when this action commenced, to $6.8 million this year. The NBA defendants notoriously have refused to divulge any financial information -- either in Congress or here in support of any of their positions (Reply Mem. 13).

9. The NBA's cries of poverty and "destruction" should be read in the same light as the ABA's unsupported claims to the same relief. The ABA has been claiming for four years that it is going out of business. It made this claim in 1970 to Judges McMahon and Tenney; it made it to Congress in 1971-1973; it made it to your Honor in August 1973 when the injunction was reaffirmed and it made the contention again to your Honor in March in seeking to merge teams into the NBA outside the injunction order. Not once has the ABA come forward with any financial figures.

10. The NBA also accuses the named plaintiffs

of having a motive to "sell-out" the class because they, the Players Association and I have been made targets of the ABA's recently filed counterclaims and cross-claim. As set forth in the players' reply brief (Reply Mem. 15-16), and in the players' own affidavits there is no truth or logic to that contention. I would only add a word about the claim levelled against me by the ABA defendants that I participated in a scheme to take bribes from the NBA for the purpose of discouraging players from playing in the ABA. I have moved for summary judgment on that claim along with the players and the Association on the claims against them. The players know the charge is false and join me in believing that the charge should and will be dismissed forthwith. In any event, I am not a named plaintiff or a class representative and should that charge against me not be dismissed, nothing can or will affect the players' proper uniform stand against the ABA and NBA on the merger and the intra-league restraint questions.

11. Further, the NBA seeks to distinguish "old" present players who were playing when the suit began and are still playing from "new" present players who joined the NBA after 1970. No reason for any alleged conflict is given, and again none exists as is exemplified by the affidavit of just such a "new" present player, Dean Meminger. Both "old" and "new" present players will be impacted by the intra-league restraints and the merger proposal for years to come in exactly the same manner (Reply Mem. 16-17). The Court should note that all the "new" players are keenly aware of the existence of

this action. They support it and share the legal fees to protect their own interests involved in this action.

12. The NBA seeks to make a point of the fact that over the years a few players have managed to obtain a clause in their contracts giving them certain limited approval rights as to being traded, and other players have received no-cut contracts (meaning that if they are dropped by the team, they still may receive pay). The "no-cut" clause is not at issue in this suit. The intra-league restraints which are the heart of the suit -- reserve clause, compensation among teams on free-agent movement, the common draft -- and the merger, are all still in the case impacting everyone irrespective of whether four players have had the benefit of a modified trading clause (Reply Mem. 17-18).

13. Similarly, the NBA seeks to drive a wedge between the players who went on into coaching and management positions in the NBA or ABA and the players who are not in these positions, by speculating that a potential conflict exists between them. The affidavits of several such former players who are now in coaching and managerial positions are annexed hereto and their sworn statements showing that no conflict exists should dispel the NBA's speculation.

14. The apparent reason underlying the NBA's attempt so to break down the class into all these artificial, minute sub-categories is to split a uniform group of plaintiffs into allegedly conflicting sub-classes and force them to give up their attorneys, Weil, Gotshal & Manges. The NBA's position

even goes further on this score. It states that the players are not really the plaintiffs here, they are merely "union stewards" of the Players Association and that since Weil, Gotshal & Manges are allegedly that union's collective bargaining lawyers, they cannot represent the players in this antitrust suit.

15. Not one of these assertions is true. The players are the ones who sued here; the Players Association did not sue. The players have been injured in their trade and business, not their Association. Weil, Gotshal & Manges was retained as antitrust and litigation counsel for the first time in any matter involving the players or the Association one month prior to the filing of this action. Prior thereto, those lawyers had no connection with the Players Association whatever. They have never before or since represented the Association as labor counsel or in connection with any collective bargaining matters. I have always acted as sole labor counsel and collective bargainer. They have litigated, in addition to this case, matters for individual players who have had contract disputes with teams and for the Association in litigated arbitration matters having nothing to do with collective bargaining. All fees received by those lawyers have come from the players through special assessments. Nor is the NBA's implication true that the Association conflicts with its own players.

16. Although the Players Association is not and should not be a party in this action, and it seeks no relief herein, the Association takes no contrary position to

the players. The Association consistently has been opposed to the merger, as well as to the reserve clause and common draft which the NBA defendants have imposed on the players unilaterally since 1946 -- long before the Association existed -- (see my affidavit dated August 26, 1974 in opposition to the summary judgment motions of the NBA and ABA). Thus, no conflict exists between the Association and the players, and the only purpose to be served by the NBA's implication that Weil, Gotshal and Manges is precluded from representing the Association and the players would be to place the Court's imprimatur upon the NBA's recently announced plan to bleed the players to death. It is preposterous to believe an implied charge that these attorneys have any interests to protect other than those of all the players they have protected for four years. Those attorneys filed this action and motions herein for all the players; they have worked for all the players in Congress; they obtained the preliminary injunction originally in this case and helped work out a modification thereof in August, 1973 with this Court to protect all the players; they have defended against the NBA's and ABA's summary judgment motions; and have made a motion on behalf of all the players to dismiss the ABA's belated claims recently asserted against the players (Reply Mem. 34-36).

17. Finally, contrary to the NBA's charge, the named plaintiffs do not seek to represent, and the class does not include college players, high school players or

unborn players. There is no ever-expanding class of "future" NBA players that has allegedly grown from 160 in 1970 to "literally hundreds of thousands" of players. The NBA attributes that statement to me in my affidavit of March, 1974 (NBA Brief 3,7), but I clearly said there (¶9) that out of the hundreds of thousands of high school and college players "each year fewer than fifty are good enough to join the NBA." The NBA does not refer to that part of my statement.

18. Nor does the NBA refer to ¶36 of my affidavit where I said that the class will expand only "as more players join the active role of players between now and the date of a final judgment" herein or to the plaintiffs' moving brief (p.9) where they spell out exactly how many class members will ultimately be included in the class. If a judgment herein is rendered in a year only fewer than 50 new players will join the class, and if a judgment is rendered within two years only fewer than 100 new players will join the class (Plaintiffs' moving brief pp. 9-10). Accordingly, the Court knows now that the 365 players who have played since 1970 are in the class, and the Court will also know by the time of judgment whether there are 50 or 100 more players to be added to the class.

19. The NBA's obvious purpose here is to try to force the players to serve a class notice, in a suit both for injunctions and for damages, on everyone who conceivably "might" be in the class prior to a judgment here. The

players have no fear of and will pay the costs, if necessary, of serving notice to these players who are actually in the class. But the NBA's unreasonable desire to force a notice to be served on people who will never be in the class should not be countenanced as it is merely another attempt by the owners to have the players needlessly waste money and to improperly solicit, by notice, the views of persons who have no interest in this action.

20. Rather than permit the NBA to play this game, if notice is required, Rule 23 ought to be followed as the proper method for resolving this question. The Rule says all class members shall be given notice. The players will give notice to all new players who have become active players each year after the determination of the class and before judgment is rendered. Thus, if required, the players would send in October 1974 a Rule 23 notice to the 365 present class members who played between the 1970-1971 season and the 1973-1974 season, as well as to th 50 or so new players who have joined the NBA for this 1974-1975 season. If there is no judgment prior to the start of the 1975-1976 season (in October 1976) then another notice would be sent to the 50 or so new players who became part of the class that year, and so on.

Lawrence Fleisher

Sworn to before me this

31st day of August, 1974.

JAMES M. GORIN
Notary Public, State of New York
No. 24-6472631
Qualified in Westchester County
Certificate filed in New York County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

AFFIDAVIT

70 Civ. 1526 (RLC)

STATE OF WISCONSIN)
) ss :
COUNTY OF MILWAUKEE)

OSCAR ROBERTSON, being duly sworn, deposes and says:

1. I am a professional basketball player, having been employed by the Cincinnatti Royal and Milwaukee Bucks teams in the National Basketball Association ("NBA") through the 1973-74 season. I have played professional basketball in the NBA continuously since 1960.

2. I am a named plaintiff in this action which was instituted as a class action on behalf of all players active in the NBA in 1970 at the commencement of this action as well as those players who will have become active NBA players prior to the judgment in this action. I was one of 14 then active players selected by all the players to sue on their behalf in 1970.

3. By this action, the players seek both to recover money damages arising from the NBA's reserve clause and common draft and to enjoin these intra-league restraints. The players are also seeking permanently to enjoin any

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

AFFIDAVIT

70 Civ. 1526 (RLC)

STATE OF WISCONSIN)
) ss.:
COUNTY OF MILWAUKEE)

OSCAR ROBERTSON, being duly sworn, deposes and says:

1. I am a professional basketball player, having been employed by the Cincinnatti Royal and Milwaukee Bucks teams in the National Basketball Association ("NBA") through the 1973-74 season. I have played professional basketball in the NBA continuously since 1960.

2. I am a named plaintiff in this action which was instituted as a class action on behalf of all players active in the NBA in 1970 at the commencement of this action as well as those players who will have become active NBA players prior to the judgment in this action. I was one of 14 then active players selected by all the players to sue on their behalf in 1970.

3. By this action, the players seek both to recover money damages arising from the NBA's reserve clause and common draft and to enjoin these intra-league restraints. The players are also seeking permanently to enjoin any

Robertson

merger between the NBA and the American Basketball Association ("ABA"). I testified in the Senate hearings on behalf of all the players, who successfully defeated the owners' attempt to obtain an exemption from the antitrust laws for such merger. The Senate Subcommittee unanimously reported that the merger could take place as an exemption to the anti-trust laws, only if the intra-league restraints in the NBA, which the Subcommittee stated were illegal, were substantially eliminated. Accordingly, I am quite familiar with the issues raised in this lawsuit and I submit this affidavit in support of plaintiffs' motion to have this suit properly determined as a class action.

4. Defendants oppose the maintenance of this suit as a class action on the purported ground that I and the other 13 named plaintiffs will not fairly and adequately represent the class because conflicting interests may exist among individual class members. Defendants suggest that since some players active in 1970 have retired since then, such former players may be interested solely in obtaining money damages and that their interests may therefore be antagonistic to those of the presently active NBA players like me who seek both the same money damages and to end defendants' illegal activities which have prevented and continue to prevent players from enjoying the benefits of a free and competitive market. Defendants also charge that players like me who have individually negotiated "no-trade" and/or "no-cut" provisions in their contracts may be "at

odds with other NBA players" because such players may not be interested in having such provisions declared unlawful. Based on my long years of experience and dealing with many NBA players, past and present, in my capacity as President of the Players Association, I know there are no such conflicts among the players.

5. I and the other 13 named plaintiffs feel the same way today as we did when we originally filed this suit that the game of basketball should be reformed so that all players can receive the benefits of competition --- fair compensation for their services, and the freedom to choose where they wish to play and for whom they shall play after their contracts lawfully expire. There is no other business in which illegal restraints like those prevalent in the NBA are permitted to exist.

6. The fact that there are now "former" and "present" players arises because the owners delayed a class determination in this action three years by their unsuccessful attempt to obtain a Congressional exemption from the antitrust laws for their proposed merger. But for that fact, I am informed by counsel that the class determination would have been made in 1970.

7. In any event, there are no conflicts between past and present NBA players nor among present players as charged. The fact that this lawsuit seeks injunctive relief to eliminate in the future the NBA's restrictive practices, and to prevent a merger between the NBA and the ABA is in no

way inconsistent with the goal or interest of all class members to recover money damages since those damages are being sought by the present as well as the former NBA players. Indeed, the three named plaintiffs who are now former NBA players (Joseph Caldwell, Thomas Meschery and McCloy McLemore) all support plaintiffs' request for a permanent injunction as do the other class members, former and present alike. In obtaining a preliminary injunction in 1970 against the merger, the named plaintiffs and their counsel benefited all the players, including now "former" players. Further, I do not believe that former NBA players are seeking to destroy or bankrupt the NBA to the economic detriment of those players still active in the NBA. Indeed, the presently active players, including me, are also seeking to recover the same money damages. Nowhere does the NBA show with facts and figures how its members will be rendered bankruptby paying a judgment should one be awarded.

8. The fact that I and a tiny handful of other players who have the right to approve unilateral trades and assignments of players contracts and therefore are not impacted as greatly by the trade provisions in that Uniform Player Contract, is immaterial to the prosecution of this action as a class action against the reserve clause, common draft and merger. Similarly, the fact that I and other NBA players have been able to negotiate a "no-cut" clause (meaning that if a team drops us we get paid) has nothing to do with the issues being litigated here. Obviously, players like me who have managed to obtain certain concessions have the right to join with the other players in

seeking the elimination of the other illegal practices which impact all players equally.

9. I also seriously object to the charge by the NBA that as a present player I would "sell out" the former players in the class because the present players have been accused by the ABA in a counterclaim of conspiracy with the NBA to destroy the ABA. That accusation is so palpably false and will be proved false by the record that the present players have nothing to fear from continuing the action as named plaintiffs for all the players. Moreover, the former players in the class are ably represented by three former players who also will assure that all players interests a e protected.

10. Accordingly, I see no possibility of conflict in the prosecution of this lawsuit as a class action and I feel that I will fully and adequately represent all members of the class, former, present and future players alike. Further, I believe that the interests of all the class members have been and will continue to be fully and adequately represented by plaintiffs' counsel, Weil, Gotshal & Manges, and I see no reason why separate counsel should be retained in this case by me or any other former or present NBA player.

Oscar Robertson

Sworn to before me this
22 day of August, 1974

Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

AFFIDAVIT

70 Civ. 1526 (RLC)

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

DAVID DEBUSSCHERE, being duly sworn, deposes and says:

1. I am employed as the General Manager of the New York Nets in the American Basketball Association ("ABA"). From December 1969 through May 1974 I was an active player with the New York Knickerbockers in the National Basketball Association ("NBA"). Prior to 1969, I was a player for and a player-coach of the Detroit Pistons of the NBA. I retired as an active player after the 1973-1974 season.

2. In March 1970, while still an active player in the NBA, I authorized the named plaintiffs herein to institute this action on my behalf as a class action for damages arising from the NBA's reserve clause and common draft and for an injunction against these intra-league restraints and against a merger between the NBA and ABA. I also testified in the Senate hearings on behalf of all the players, who successfully defeated the owners' attempt to obtain an

exemption from the antitrust laws for such merger. As the Court is aware, the Senate Subcommittee unanimously reported that in its view a merger could be allowed to take place as an exemption to the antitrust laws only if the intra-league restraints -- deemed illegal by the Subcommittee -- were substantially eliminated. Accordingly, I am familiar with the issues raised in this lawsuit and I submit this affidavit in support of plaintiffs' motion to have this suit determined to be a class action.

3. I am informed that the defendants are opposing the maintenance of this suit as a class action on the purported ground that I and other class members will not be fairly and adequately represented by the named plaintiffs. Defendants apparently claim that I and other former players like me are interested solely in obtaining money damages and that our interests are therefore in conflict with those of the presently active NBA players whose sole interest is alleged to be a desire to stop defendants' illegal activities in the future. Defendants also suggest that because I and several other former NBA players have "joined the ranks of management in the ABA", we no longer want to see defendants' unlawful practices eliminated. These charges are simply not true.

4. Rather, I feel the same way today as I did when I originally requested that this suit be instituted on my behalf that the game of basketball should be reformed so that all players could enjoy the benefits of a free and competitive market. I know of no other business in which

restraints like those prevalent in the NBA are permitted to exist. I therefore strongly support the efforts of the named plaintiffs to obtain injunctive relief to eliminate the NBA's restrictive practices, as well as to collect damages.

5. The fact that I and other former NBA players are also hoping to recover damages as a result of this suit is in no way inconsistent with this goal or adverse to the interests of the present NBA players. I and the other former NBA players upon whose behalf this suit was commenced certainly do not seek to destroy or bankrupt the NBA to the economic detriment of those players still active in the NBA. Indeed, those presently active players are also seeking to recover the same money damages. Nowhere does the NBA show with facts and figures how its members will be rendered bankrupt by paying a judgment should one be awarded.

6. Accordingly, there is no conflict in this lawsuit between my position and that of the other former players (both in and out of management) and that of the present players. This action was commenced for the betterment of all players in the NBA, and I feel that my interests have been and will continue to be fully and adequately represented herein by the named plaintiffs, particularly since three of those named representatives and former NBA players like myself (Joseph Caldwell, McCoy McLemore and Thomas Meschery). Further, I believe that the interests

of all the class members have been and will continue to be fully and adequately represented by plaintiffs' counsel, Weil, Gotshal & Manges, and I can see no reason why separate counsel should be retained in this case by myself or any other former NBA player.

Dave DeBusschere

Sworn to before me this
12th day of August, 1974

Curtis A. Parker
Notary Public

CURTIS A. PARKER
Notary Public, State of New York
No. 31-0291021
Qualified in New York County
Commission Expires March 30, 1976

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

AFFIDAVIT

70 Civ. 1526 (RLC)

STATE OF TEXAS)
) ss.:
COUNTY OF HARRIS)

McCOY McLEMORE, being duly sworn, deposes and says:

1. I am a former professional basketball player, having played for several teams in the National Basketball Association ("NBA"), the last team being the Milwaukee Bucks during the 1971-1972 season, after which season I retired as an active player. I am now engaged in activities which are totally unrelated to basketball.

2. I am a named plaintiff in this action which was instituted as a class action on behalf of all players active in the NBA at and since the commencement of this action, as well as those players who will become active NBA players prior to judgment in this action. At the time this action was commenced, I was an active NBA player and, as

McLemore
Aff.

noted above, I have since retired.

3. By this action, the players seek both to recover money damages arising from the NBA's reserve clause and common draft and to enjoin these intra-league restraints. The players are also seeking to permanently enjoin any merger between the NBA and the ABA. I am familiar with the issues raised in this lawsuit and I submit this affidavit in support of plaintiffs' motion to have this suit properly determined to be class action.

4. Defendants oppose the maintenance of this suit as a class action on the purported ground that I and the other 13 named plaintiffs will not fairly and adequately represent the class because conflicting interests may exist among individual class members. Defendants suggest that former players like me may be interested solely in obtaining money damages and that our interests may therefore be antagonistic to those of the presently active NBA players who want to end defendants' illegal activities which have prevented and continue to prevent players like myself from enjoying the benefits of a free and competitive market. I am, however, aware of no such conflicting interests.

5. Rather, I feel the same way today as I did when I originally instituted this suit that the game of basketball should be reformed so that all players can receive the benefits of competition --- fair compensation for their services, and the freedom to choose where they wish to play and for whom they shall play after their contracts lawfully expire. I know of no other business in

which illegal restraints like those prevalent in the NBA are permitted to exist. As a named plaintiff and class representative, I will continue to seek final injunctive relief to eliminate the NBA's restrictive practices, and to oppose a merger between the NBA and the ABA.

6. The fact that I and other former NBA players are also hoping to recover damages as a result of this suit is in no way inconsistent with this goal or adverse to the interests of the present NBA players. I and the other former NBA players upon whose behalf this suit was commenced certainly do not seek to destroy or bankrupt the NBA to the economic detriment of those players still active in the NBA. Indeed, those presently active players are also seeking to recover the same money damages. Nowhere does the NBA show with facts and figures how its members will be rendered bankrupt by paying a judgment should one be awarded.

6. Nor do I believe that the rights of former NBA players will in any way be compromised by the prosecution of this suit as a class action. Three (myself, Joseph Caldwell and Thomas Meschery) of the 14 named plaintiffs are former NBA players and it is hardly conceivable that we would act in any way that would be contrary to our own best interests and those of other former players.

7. Accordingly, I see no possibility of conflict in the prosecution of this lawsuit as a class action and I feel that I will fully and adequately represent all members of the class, former, present and future players alike. Further, I believe that the interests of all the class

members have been and will continue to be fully and adequately represented by plaintiffs' counsel, Weil, Gotshal & Manges, and I can see no reason why separate counsel should be retained in this case by myself or any other former or present NBA player.

McCoy McLemore

Sworn to before me this
day of August, 1974

Notary Public

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

AFFIDAVIT

70 Civ. 1526 (RLC)

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

DEAN MEMINGER, being duly sworn, deposes and says:

1. I am a professional basketball player, employed by the Atlanta Hawks team in the National Basketball Association ("NBA"). I became an active NBA player in 1971.

2. While I was not an active player in the NBA when this lawsuit was filed, I understand that the named plaintiffs commenced this lawsuit as a class action in April 1970 on behalf of all the then active players as well as players, like me, who would subsequently become active players prior to judgment in this action. I am familiar with the issues raised in this lawsuit and I submit this affidavit in support of plaintiffs' motion to have this suit properly determined to be a class action.

3. I am informed that the defendants are opposing the maintenance of this suit as a class action on the purported ground that I and the other players who joined the

Meminger
Aff

NBA after this action began may not be fairly and adequately represented by the named plaintiffs. Defendants appare claim that I and these other so-called "new" players may not desire to stop defendants' illegal activities and also collect damages arising from them, even though these activities have prevented and continue to prevent players like me from enjoying the benefits of a free and competitive market.

4. To the contrary, I and the other so-called "new" players strongly support the efforts of all the named plaintiffs to obtain injunctive relief to eliminate the NBA's restrictive practices, and to prevent a merger between the NBA and the American Basketball Association, and to collect damages. I believe, as do the other players who have entered the league since 1970, that the game of basketball should be reformed so that all players can receive the benefits of free competition --- fair compensation for their services, and the freedom to choose where they wish to play and for whom they shall play after their contracts lawfully expire. I know of no other business in which illegal restraints like those prevalent in the NBA are permitted to exist. Even though I did not sign an authorization in 1970 to commence this action, simply because I was not a professional player in 1970, I fully support this action.

5. Further, I do not believe that the money damages sought by "old" and "new" players alike will destroy the NBA as charged by the owners. Nowhere does the NBA show with facts and figures how its members will be rendered

bankrupt by paying a judgment should one be awarded.

6. The NBA also charges that because of the ABA's asserted counterclaim against present players like me on grounds of allegedly conspiring with the NBA to destroy the ABA, I will not be adequately represented by named plaintiffs who are former players, who are not subject to such charge. That, too, is not the case. The ABA's charges against players are so false and so contrary to the record, that it is inconceivable to me that any present player would attempt to "sell out" the former players. Indeed, I understand that all the named plaintiffs -- former and present players alike -- have joined in a summary judgment notice to strike these ABA claims.

7. Accordingly, I see no conflict in this lawsuit between my position and that of the other players who have joined the NBA since this action began and that of the other players, both former and present. This action was commenced for the betterment of all players in the NBA, and I feel that my interests are fully and adequately represented herein by the named plaintiffs. Further, I believe that the interests of all the plaintiffs have been and will continue to be fully and adequately represented by plaintiffs' counsel, Weil, Gotshal & Manges, and I can see no reason why separate counsel should be retained in this case by me or any other NBA player.

Allan Murphy

Sworn to before me this
20th day of August, 1974

Curtis A. Parker

Notary Public

CURTIS A. PARKER
Notary Public, State of New York
No. 31-[illegible]5
Qualified in New York County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

----------x

AFFIDAVIT

70 Civ. 1526 (RLC)

STATE OF NORTH CAROLINA)
) ss.:
COUNTY OF GUILFORD)

JOSEPH CALDWELL, being duly sworn, deposes and says:

1. From 1967 through the 1970-1971 season I played professional basketball in the National Basketball Association ("NBA") successively for the Detroit Pistons, St. Louis Hawks and the Atlanta Hawks. I am now a professional basketball player, employed by the St. Louis team, the successor to the Carolina Cougars, in the American Basketball Association ("ABA").

2. At the time this action was commenced, I was an active NBA player, and a named plaintiff, suing on behalf of a class of all players active in the NBA at the commencement of this action, as well as those players who will become active NBA players prior to judgment in this action. However, as indicated above, for the past four seasons, I have been an active player in the ABA.

3. By this action, the named plaintiffs on behalf of all players seek both to recover money damages arising from the operation of the NBA's reserve clause and common draft and to enjoin these intra-league restraints. The players are also seeking permanently to enjoin any merger between the NBA and the ABA. As a named plaintiff, I am familiar with the issues raised in this lawsuit and I submit this affidavit in support of plaintiffs' motion to have this suit properly determined to be a class action.

4. Defendants oppose the maintenance of this suit as a class action on the purported ground that I and the other 13 named plaintiffs will not fairly and adequately represent the class because conflicting interests may exist among individual class members. Defendants suggest that players like me who left the NBA may be solely interested in obtaining money damages and not in continuing the challenge to the intra-league restraints, and that our interests may therefore be antagonistic to thoseof the presently active NBA players who allegedly may only desire to end defendants' illegal activities which have prevented and continue to prevent players like myself from enjoying the benefits of a free and competitive market. This charge is untrue. Defendants also assert that I and the other former NBA players who are presently active in the ABA "may well favor the merger of the two leagues," and that therefore our interests are adverse to other former and present NBA players. This also is simply not the case. In fact, I and several other

presently active ABA players are now seeking to intervene as plaintiffs in this lawsuit as class representatives on behalf of the ABA players.

5. I feel the same way today as I did when I originally instituted this suit that the game of basketball should be reformed so that all players can receive the benefits of competition --- fair compensation for their services, and the freedom to choose where they wish to play and for whom they shall play after their contracts lawfully expire. I know of no other business in which illegal restraints like those prevalent in the NBA are permitted to exist. The ABA players seeking to intervene here join in the efforts of the NBA players, past and present, to do away with all anti-competitive practices in professional basketball. As a named plaintiff and class representative here, I will continue to seek final injunctive relief both to eliminate the NBA's restrictive practices, and to prevent a merger between the NBA and the ABA.

6. The fact that I and other former NBA players are also hoping to recover damages as a result of this suit is in no way inconsistent with this goal or adverse to the interests of the present NBA players. I and the other former NBA players upon whose behalf this suit was commenced certainly do not seek to destroy or bankrupt the NBA to the economic detriment of those players still active in the NBA. Indeed, those presently active players are also seeking to recover the same money damages. Nowhere does the

NBA show with facts and figures how its members will be rendered bankrupt by paying a judgment should one be awarded.

7. Nor do I believe that the rights of former NBA players will in any way be compromised by the prosecution of this suit as a class action. Two of the named plaintiffs, Thomas Mahery and McCoy McLemore, are now retired and I am now playing in the ABA. It is hardly conceivable that we former NBA players who are class representatives would act in any way that would be contrary to our own best interests and those of other former players whether retired or, like myself, still active in the ABA.

8. Accordingly, I see no possibility of conflict in the prosecution of this lawsuit as a class action and I feel that I will fully and adequately represent all members of the class, former, present and future players alike. Further, I believe that the interests of all the class members have been and will continue to be fully and adequately represented by plaintiffs' counsel, Weil, Gotshal & Manges, and I can see no reason why separate counsel should be retained by myself or any other former or present NBA player.

Sworn to before me this
day of August, 1974.

Notary Public

My Commission Expires Dec 8, 1975

269

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

AFFIDAVIT

70 Civ. 1526 (RLC)

STATE OF WASHINGTON)
) ss.:
COUNTY OF KING)

LEN WILKENS, being duly sworn, deposes and says:

1. I was an active player in the National Basketball Association ("NBA") through the 1973-1974 season, having played for several teams, the last being the Cleveland team. I am currently the Coach of the Portland team.

2. In March 1970, while still an active player in the NBA, I authorized the named plaintiffs herein to institute this action on my behalf as a class action for damages arising from the NBA's reserve clause and common draft and for an injunction against these intra-league restraints and against a merger between the NBA and American Basketball Association ("ABA"). Accordingly, I am familiar with the issues raised in this lawsuit and I submit this affidavit in support of plaintiffs' motion to have this suit determined to be a class action.

Wilkens

3. I am informed that the defendants opposing the maintenance of this suit as a class action on the purported ground that I and other class members will not be fairly and adequately represented by the named plaintiffs. Defendants apparently claim that I and other former players like me are interested solely in obtaining money damages and that our interests are therefore in conflict with those of the presently active NBA players whose sole interest is alleged to be a desire to stop defendants' illegal activities in the future. Defendants also assert the because I and several other former NBA players are presently working as coaches and in other management positions with NBA teams we "could hardly be expected to share the interests" of other players. Nothing could be further from the truth.

4. I feel the same way today as I did when I originally requested that this suit be instituted on my behalf that the game of basketball should be reformed so that all players could enjoy the benefits of a free and competitive market. I know of no other business in which restraints like those prevalent in the NBA are permitted to exist. I therefore strongly support the efforts of the named plaintiffs to obtain injunctive relief to eliminate the NBA's restrictive practices, to prevent a merger between the NBA and the ABA, and to collect damages.

5. The fact that I and other former NBA players are also hoping to recover those damages as a result of this suit is in no way inconsistent with this goal or

adverse to the interests of the present NBA players. I and the other former NBA players upon whose behalf this suit was commenced certainly do not seek to destroy or bankrupt the NBA to the economic detriment of those players still active in the NBA. Indeed, those presently active players are also seeking to recover the same money damages. Nowhere does the NBA show with facts and figures how its members will be rendered bankrupt by paying a judgment should one be awarded.

6. Accordingly, there is no conflict in this lawsuit between my position and that of the other former players (both in and out of management) and that of the present players. This action was commenced for the betterment of all players in the NBA, and I feel that my interests have been and will continue to be fully and adequately represented herein by the named plaintiffs, particularly since three of those named representatives are former NBA players like myself (Joseph Caldwell, McCoy McLemore and Thomas Meschery). Further, I believe that the interests of all the class members have been and will continue to be fully and adequately represented by plaintiffs' counsel, Weil, Gotshal & Manges, and I can see no reason why separate counsel should be retained in this case by myself or any other former NBA player.

Sworn to before me this
day of August, 1974

Notary Public

272

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

----------x

AFFIDAVIT

70 Civ. 1526 (RLC)

STATE OF MICHIGAN)
) ss.:
COUNTY OF WAYNE)

RAYMOND SCOTT, being duly sworn, deposes and says:

1. I was an active player in the National Basketball Association ("NBA") until the 1970-1971 Season. I am currently the Coach of the Detroit Pistons in the NBA.

2. In March 1970, while still an active player in the NBA, I authorized the named plaintiffs herein to institute this action on my behalf as a class action for damages arising from the NBA's reserve clause and common draft and for an injunction against these intra-league restraints and against a merger between the NBA and American Basketball Association ("ABA"). Accordingly, I am familiar with the issues raised in this lawsuit and I submit this affidavit in support of plaintiffs' motion to have this suit determined to be a class action.

Scott Aff

3. I am informed that the defendants are opposing the maintenance of this suit as a class action on the purported ground that I and other class members will not be fairly and adequately represented by the named plaintiffs. Defendants apparently claim that I and other former players like me are interested solely in obtaining money damages and that our interests are therefore in conflict with those of the presently active NBA players whose sole interest is alleged to be a desire to stop defendants' illegal activities in the future. Defendants also assert the because I and several other former NBA players are presently working as coaches and in other management positions with NBA teams we "could hardly be expected to share the interests" of other players. Nothing could be further from the truth.

4. I feel the same way today as I did when I originally requested that this suit be instituted on my behalf that the game of basketball should be reformed so that all players could enjoy the benefits of a free and competitive market. I know of no other business in which restraints like those prevalent in the NBA are permitted to exist. I therefore strongly support the efforts of the named plaintiffs to obtain injunctive relief to eliminate the NBA's restrictive practices, to prevent a merger between the NBA and the ABA, and to collect damages.

5. The fact that I and other former NBA players are also hoping to recover those damages as a result of this suit is in no way inconsistent with this goal or

adverse to the interests of the present NBA players. I and the other former NBA players upon whose behalf this suit was commenced certainly do not seek to destroy or bankrupt the NBA to the economic detriment of those players still active in the NBA. Indeed, those presently active players are also seeking to recover the same money damages. Nowhere does the NBA show with facts and figures how its members will be rendered bankrupt by paying a judgment should one be awarded.

6. Accordingly, there is no conflict in this lawsuit between my position and that of the other former players (both in and out of management) and that of the present players. This action was commenced for the betterment of all players in the NBA, and I feel that my interests have been and will continue to be fully and adequately represented herein by the named plaintiffs, particularly since three of those named representatives are former NBA players like myself (Joseph Caldwell, McCoy McLemore and Thomas Meschery). Further, I believe that the interests of all the class members have been and will continue to be fully and adequately represented by plaintiffs' counsel, Weil, Gotshal & Manges, and I can see no reason why separate counsel should be retained in this case by myself or any other former NBA player.

Sworn to before me this
day of August, 1974

Notary Public

275

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

AFFIDAVIT

70 Civ. 1526 (RLC)

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

KEVIN LOUGHERY, being duly sworn, deposes and says:

1. I was an active player in the National Basketball Association ("NBA") through the 1971-1972 playing season, having played that year for both the Baltimore and Philadelphia teams. In the 1972-1973 seasons I was Coach of the Philadelphia team in the NBA, and since then have been Coach of the New York Nets in the American Basketball Association ("ABA").

2. In March 1970, while still an active player in the NBA, I authorized the named plaintiffs herein to institute this action on my behalf as a class action for damages arising from the NBA's reserve clause and common draft and for an injunction against these intra-league restraints, and against a merger between the NBA and American Basketball Association. Accordingly, I am familiar with the

Loughery Aff.

issues raised in this lawsuit and I submit this affidavit in support of plaintiffs' motion to have this suit determined to be a class action.

3. I am informed that the defendants are opposing the maintenance of this suit as a class action on the purported ground that I and other class members will not be fairly and adequately represented by the named plaintiffs. Defendants apparently claim that I and other former players like me are interested solely in obtaining money damages and that our interests are therefore in conflict with those of the presently active NBA players whose sole interest is alleged to be a desire to stop defendants' illegal activities in the future. Defendants also suggest that because I and several other former NBA players have "joined the ranks of management in the ABA", we no longer want to see defendants' unlawful practices eliminated. These charges are simply not ture.

4. Rather, I feel the same way today as I did when I originally requested that this suit be instituted on my behalf that the game of basketball should be reformed so that all players could enjoy the benefits of a free and competitive market. I know of no other business in which restraints like those prevalent in the NBA are permitted to exist. I therefore strongly support the efforts of the named plaintiffs to obtain injunctive relief to eliminate the NBA's restrictive practices, as well as to collect damages.

5. The fact that I and other former NBA players are also hoping to recover damages as a result of this suit is in no way inconsistent with this goal or adverse to the interests of the present NBA players. I and the other former NBA players upon whose behalf this suit was commenced certainly do not seek to destroy or bankrupt the NBA to the economic detriment of those players still active in the NBA. Indeed, those presently active players are also seeking to recover the same money damages. Nowhere does the NBA show with facts and figures how its members will be rendered bankrupt by paying a judgment should one be awarded.

6. Accordingly, there is no conflict in this lawsuit between my position and that of the other former players (both in and out of management) and that of the present players. This action was commenced for the betterment of all players in the NBA, and I feel that my interests have been and will continue to be fully and adequately represented herein by the named plaintiffs, particularly since three of those named representatives and former NBA players like myself (Joseph Caldwell, McCoy McLemore and Thomas Meschery). Further, I believe that the interests of all the class members have been and will continue to be fully and adequately represented by plaintiffs' counsel, Weil, Gotshal & Manges, and I can see no reason why

separate counsel should be retained in this case by myself or any other former NBA player.

Kevin Loughery

Sworn to before me this
14th day of August, 1974

Curtis A. Parker

Notary Public
CURTIS A. PARKER
Notary Public, State of New York
No. 31-8276565
Qualified in New York County
Commission Expires March 30, 1976

279

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

AFFIDAVIT

70 Civ. 1526 (RLC)

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JOHN EGAN, being duly sworn, deposes and says:

1. I was an active player in the National Basketball Association ("NBA") through the 1971-1972 season, having played for several teams, the last being the Houston team. I am currently the Coach of the Houston team.

2. In March 1970, while still an active player in the NBA, I authorized the named plaintiffs herein to institute this action on my behalf as a class action for damages arising from the NBA's reserve clause and common draft and for an injunction against these intra-league restraints and against a merger between the NBA and American Basketball Association ("ABA"). Accordingly, I am familiar with the issues raised in this lawsuit and I submit this affidavit in support of plaintiffs' motion to have this suit determined to be a class action.

3. I am informed that the defendants are opposing the maintenance of this suit as a class action on the purported ground that I and other class members will not be fairly and adequately represented by the named plaintiffs. Defendants apparently claim that I and other former players like me are interested solely in obtaining money damages and that our interests are therefore in conflict with those of the presently active NBA players whose sole interest is alleged to be a desire to stop defendants' illegal activities in the future. Defendants also assert the because I and several other former NBA players are presently working as coaches and in other management positions with NBA teams we "could hardly be expected to share the interests" of other players. Nothing could be further from the truth.

4. I feel the same way today as I did when I originally requested that this suit be instituted on my behalf that the game of basketball should be reformed so that all players could enjoy the benefits of a free and competitive market. I know of no other business in which restraints like those prevalent in the NBA are permitted to exist. I therefore strongly support the efforts of the named plaintiffs to obtain injunctive relief to eliminate the NBA's restrictive practices, to prevent a merger between the NBA and the ABA, and to collect damages.

5. The fact that I and other former NBA players are also hoping to recover those damages as a result of this suit is in no way inconsistent with this goal or

adverse to the interests of the present NBA players. I and the other former NBA players upon whose behalf this suit was commenced certainly do not seek to destroy or bankrupt the NBA to the economic detriment of those players still active in the NBA. Indeed, those presently active players are also seeking to recover the same money damages. Nowhere does the NBA show with facts and figures how its members will be rendered bankrupt by paying a judgment should one be awarded.

6. Accordingly, there is no conflict in this lawsuit between my position and that of the other former players (both in and out of management) and that of the present players. This action was commenced for the betterment of all players in the NBA, and I feel that my interests have been and will continue to be fully and adequately represented herein by the named plaintiffs, particularly since three of those named representatives are former NBA players like myself (Joseph Caldwell, McCoy McLemore and Thomas Meschery). Further, I believe that the interests of all the class members have been and will continue to be fully and adequately represented by plaintiffs' counsel, Weil, Gotshal & Manges, and I can see no reason why separate counsel should be retained in this case by myself or any other former NBA player.

Sworn to before me this
14th day of August, 1974

Notary Public
CURTIS A. PARKER
Notary Public, State of New York
No. 31-8276565
Qualified in New York County
Commission Expires March 30, 1976

282

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

----------x

AFFIDAVIT

70 Civ. 1526 (RLC)

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

[illegible] CRAWFORD, being duly sworn, deposes and says:

1. I am a former professional basketball player, having played in the National Basketball Association ("NBA") for several teams, the last one being the Buffalo Braves in 1970-1971. After my retirement as an active player, I became the Assistant Commissioner of the Holcombe Rucker Basketball League in New York and am also engaged in working with young athletes, particularly basketball players.

2. In March 1970, while still an active player in the NBA, I authorized the named plaintiffs herein to institute this action on my behalf as a class action for damages arising from the NBA's reserve clause and common draft and for an injunction against these intra-league restraints and against a merger between the NBA and the

American Basketball Association ("ABA"). Accordingly, I am familiar with the issues raised in this lawsuit and I submit this affidavit in support of plaintiffs' motion to have this suit properly determined as a class action.

3. I am informed that the defendants are opposing the maintenance of this suit as a class action on the purported ground that I and other class members will not be fairly and adequately represented by the named plaintiffs and their counsel. Defendants apparently claim that I and other former players like me are interested solely in obtaining money damages and that our interests are therefore in conflict with those of the presently active NBA players whose sole interest is alleged to be a desire to stop defendants' illegal activities in the future. I am, however, aware of no such conflicting interests.

4. Rather, I feel the same way today as I did when I originally requested that this suit be instituted on my behalf, that the game of basketball should be reformed so that all players, including the children I now work with, might enjoy the benefits of a free and competitive market. I know of no other business in which restraints like those prevalent in the NBA are permitted to exist. I therefore strongly support the efforts of the named plaintiffs to obtain injunctive relief to eliminate the NBA's restrictive practices, and to prevent a merger between the NBA and the ABA.

5. The fact that I and other former NBA players are also hoping to recover damages as a result of this

suit is in no way inconsistent with this goal or adverse to the interests of the present NBA players. I and the other former NBA players upon whose behalf this suit was commenced certainly do not seek to destroy or bankrupt the NBA to the economic detriment of those players still active in the NBA. Indeed, those presently active players are also seeking to recover the same money damages. Nowhere does the NBA show with facts and figures how its members will be rendered bankrupt by paying a judgment should one be awarded.

6. Accordingly, I see no conflict in this lawsuit between my position and that of the other former players, and that of the present players, and I feel that my interests are fully and adequately represented herein by the named plaintiffs, particularly since three of those named representatives are former NBA players like me. (Joseph Caldwell, McCoy McLemore and Thomas Meschery). Further, I believe that the interests of all the class members have been and will continue to be fully and adequately represented by plaintiffs' counsel, Weil, Gotshal & Manges, and I can see no reason why separate counsel should be retained in this case by myself or any other former NBA player.

Sworn to before me this
16th day of August, 1974

Notary Public

CURTIS A. PARKER
Notary Public, State of New York
No. 31-0276725
Qualified in New York County
Commission Expires March 30, 1976

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

AFFIDAVIT

70 Civ. 1526 (RLC)

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

AL ATTLES, being duly sworn, deposes and says:

1. I was an active player for the San Francisco Warriors in the National Basketball Association ("NBA") through the 1970-1971 season. I am currently the Coach of the San Francisco team.

2. In March 1970, while still an active player in the NBA, I authorized the named plaintiffs herein to institute this action on my behalf as a class action for damages arising from the NBA's reserve clause and common draft and for an injunction against these intra-league restraints and against a merger between the NBA and American Basketball Association ("ABA"). Accordingly, I am familiar with the issues raised in this lawsuit and I submit this affidavit in support of plaintiffs' motion to have this suit determined to be a class action.

Attles

3. I am informed that the defendants are opposing the maintenance of this suit as a class action on the purported ground that I and other class members will not be fairly and adequately represented by the named plaintiffs. Defendants apparently claim that I and other former players like me are interested solely in obtaining money damages and that our interests are therefore in conflict with those of the presently active NBA players whose sole interest is alleged to be a desire to stop defendants' illegal activities in the future. Defendants also assert the because I and several other former NBA players are presently working as coaches and in other management positions with NBA teams we "could hardly be expected to share the interests" of other players. Nothing could be further from the truth.

4. I feel the same way today as I did when I originally requested that this suit be instituted on my behalf that the game of basketball should be reformed so that all players could enjoy the benefits of a free and competitive market. I know of no other business in which restraints like those prevalent in the NBA are permitted to exist. I therefore strongly support the efforts of the named plaintiffs to obtain injunctive relief to eliminate the NBA's restrictive practices, to prevent a merger between the NBA and the ABA, and to collect damages.

5. The fact that I and other former NBA players are also hoping to recover those damages as a result of this suit is in no way inconsistent with this goal or

adverse to the interests of the present NBA players. I and the other former NBA players upon whose behalf this suit was commenced certainly do not seek to destroy or bankrupt the NBA to the economic detriment of those players still active in the NBA. Indeed, those presently active players are also seeking to recover the same money damages. Nowhere does the NBA show with facts and figures how its members will be rendered bankrupt by paying a judgment should one be awarded.

6. Accordingly, there is no conflict in this lawsuit between my position and that of the other former players (both in and out of management) and that of the present players. This action was commenced for the betterment of all players in the NBA, and I feel that my interests have been and will continue to be fully and adequately represented herein by the named plaintiffs, particularly since three of those named representatives are former NBA players like myself (Joseph Caldwell, McCoy McLemore and Thomas Meschery). Further, I believe that the interests of all the class members have been and will continue to be fully and adequately represented by plaintiffs' counsel, Weil, Gotshal & Manges, and I can see no reason why separate counsel should be retained in this case by myself or any other former NBA player.

Al Attles

Sworn to before me this
22nd day of August, 1974

Addie Ramelli
Notary Public

OFFICIAL SEAL
ADDIE RAMELLI
NOTARY PUBLIC CALIFORNIA
ALAMEDA COUNTY
My Commission Expires Mar. 11, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

70 Civ. 1526 (RLC)

AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

LAWRENCE FLEISHER, being duly sworn, deposes and says:

1. I am the General Counsel of the National Basketball Players Association, and have served in that capacity since 1963. I have personally participated for the Players Association in all collective bargaining negotiations held between the Players Association and the NBA. As such, I am fully familiar with the facts recited below. I make this affidavit in opposition to the defendants' summary judgment and dismissal motions directed at plaintiffs' complaint.

2. These facts show that the defendants' shotgun attack on the NBA players' complaint and their standing to sue under the antitrust laws, is an after the fact attempt

by business competitors acting in concert to claim immunity from antitrust liability for their illegal activities and practices aimed at the players. The defendants would use labor's statutory exemption from the antitrust laws to that end, and would turn this case into an unfair labor practice, in the face of the legal authorities demonstrating the unavailability of such an immunity to the defendants. The law is set forth and discussed in plaintiffs' accompanying memorandum of law in opposition to these motions.

3. Contrary to the erroneous impression defendants seek to create, the intra-league and inter-league restraints challenged herein are not and never were products of collective bargaining. The truth is that collective bargaining produced not one of the critical restraints involved in this lawsuit -- the reserve clause, the owner's new reserve compensation scheme attached to that clause, the common player draft, the NBA-ABA merger and the NBA-ABA non-competition agreements in anticipation of merger.

4. The record described below proves that all the intra-league restraints were imposed initially, and have been maintained continuously, only by the NBA defendants' themselves, and were and are solely for their benefit. The inter-league restraints were imposed by all the defendants solely for their benefit. Inquiry into the occurrence or non-occurrence or the extent of collective bargaining (if any) is material to one issue only -- who sought and obtained these practices. Were the matter of collective

bargaining relevant for any other purpose, of course, the defendants' summary judgment motions would, in any event, have to be denied because of the existence of disputed issues of fact as reflected herein. Thus, I am submitting this affidavit solely to refute defendants' underlying factual misapprehension that the Players Association has somehow collectively bargained away the NBA players' rights to pursue either their intra-league or inter-league anti-trust conspiracy claims, and to set the record straight by correcting certain inaccurate statements and erroneous surmises contained in the affidavit of J. Walter Kennedy, dated July 25, 1974 ("Kennedy Labor Affidavit").

5. No one on behalf of the Players Association ever suggested, introduced or acquisced in any one of the NBA practices challenged here as intra-league restraints. The NBA defendants jointly and unilaterally imposed them upon the players. The same is true for the inter-league restraints. But for the preliminary injunction granted herein, they would have been jointly and unilaterally imposed upon the players by all of the defendants. Also the record is equally clear that the basic system of unilaterally imposed intra-league restraints came into existence more than a quarter of a century ago, long prior to the emergence of the Players Association less than ten years ago as the exclusive bargaining representative of all players employed by NBA member teams. As discussed below, none of these

intra-league or inter-league restraints has ever been a subject of any bargaining, except that discussions did take place on the pure reserve clause (absent the reserve compensation feature unilaterally added later). But even such limited discussions, always in the context of my telling the owners that the reserve clause was illegal, never were serious, intensive or arms-length collective bargaining, as suggested by the defendants.

6. Long prior to the commencement of the collective bargaining relationship between the Players Association and the NBA, by the NBA defendants' own admission, the reserve clause (as a perpetual owners' option) and the common draft were created by the owners only, and they jointly and unilaterally imposed them upon the NBA players through the NBA Constitution and By-laws and the Uniform Player Contract mandated by those By-laws. Though six successive collective bargaining agreements have been entered into since 1967, the NBA defendants have rigidly maintained this system, and the only substantive change therein was again made jointly and unilaterally by the NBA defendants alone, and then only long after this suit had commenced. Set forth in detail below are (1) the history of these restraints; (2) that they pre-dated, and are not the products of collective bargaining, or practices which the players or the Association sought or obtained; and (3) the consistent position taken by the Players Association that the reserve clause was illegal.

Common Draft

7. The NBA admits that the common draft was created by the NBA and has been imposed through the NBA By-laws for at least 25 years (Kennedy Affidavit ¶11). The NBA By-law provisions as to the common draft have never been part of the Uniform Player Contract, or the collective bargaining agreement between the Players Association and the NBA; the common draft has never been the subject of a collective bargaining proposal by the Players Association, and has never been the subject of collective bargaining or discussion between the Players Association and the NBA.

8. The NBA seems to attempt in its memorandum to create the false impression that there has been collective bargaining regarding the common draft by referring to the minimum salary provision of the collective bargaining agreement and to the draft in the same breath. The minimum salary provision has nothing to do with the common draft; it has always applied to all NBA players, not just to drafted rookies, and there has been no discussion whatsoever in collective bargaining or otherwise concerning the draft itself, which can only benefit the owners.

Lists, Transfers, Waivers

9. The various "lists", "transfer" rules, and "waiver" rules referred to in paragraph 12 of the Kennedy Affidavit have never been the subject of a collective bargaining proposal by the Players Association and have never been the subject of collective bargaining between the

Players Association and the NBA. The NBA refers to these matters, but does not claim, because it cannot, that these matters were bargained about.

Assignment of Player Contracts

10. From time to time during the course of collective bargaining between the Players Association and the NBA, the Players Association has proposed the elimination or modification of the Uniform Player Contract provisions which grant to the team the sole and absolute right to assign the player's contract to another NBA member team. The NBA has steadfastly rebuffed in collective bargaining the Player Association's proposal to eliminate or modify this sole and absolute right of assignment.

Reserve Clause

11. By slapping together fact fragments -- and erroneously characterizing them -- the NBA defendants would have this Court believe that there has been serious, intensive, arms-length collective bargaining on the reserve clause (whether as a perpetual owners' option or a one-year owner's option), and that this clause is the product of such bargaining. This is simply not true. In fact, the undisputed history demonstrates that the Players Association since its inception has repeatedly declared the reserve clause to be illegal and unenforceable. In response, the NBA has steadfastly refused to eliminate the clause which it had long ago jointly and unilaterally adopted.

1963-1966

12. Prior to June 1966, the NBA team owners refused to meet directly with representatives of the Players Association for collective bargaining or any other purpose, and all discussions were held between me and NBA Commissioner, Mr. Kennedy. Nevertheless, on a number of occasions during this early period I orally advised Mr. Kennedy of the Players Association position that the reserve clause was illegal and that it should be eliminated.

13. At the first meeting between representatives of the Players Association and the NBA team owners at an NBA Board of Governors meeting on June 8, 1966, I made an oral presentation on behalf of the Players Association on the six proposals set forth in my letter of June 1, 1966 (Kennedy Affidavit, Exh. 9). I informed the NBA team owners of the Players Association position that the reserve clause was illegal and that it should be eliminated. No response was made by the NBA team owners at the meeting, and, indeed, there was no discussion at the meeting relating to the reserve clause other than my oral presentation.

14. The correspondence referred to in paragraphs 26, 27 and 28 of the Kennedy Affidavit, far from evidencing "continued negotiation over the option clause" (¶ 27), reflect the total failure of the NBA team owners to respond to the proposals made by the Players Association in my letter

dated June 1, 1966 and presented at the June 8, 1966 meeting. In fact, no collective bargaining negotiations took place during this period at all as reflected in my January 17, 1967 letter to Mr. Kennedy (Kennedy Affidavit, Exh. 14). As I stated in that letter:

> "The Players Association feels strongly that a period of eight months is an unwarranted length of time for the League to come to a decision on the players' requests."

1967

15. Contrary to the statement in paragraph 18 of the Kennedy Affidavit that "the keystone to the first formal collective bargaining agreement ... was negotiation over the terms of the Uniform Player Contract," the actual keystone to that agreement -- as reflected in paragraph 31 of the Kennedy Affidavit -- was the pension issue. The NBA team owners failed to engage in any meaningful collective bargaining as to the pension until the Players Association announced plans for a strike over that issue early in 1967. It was also during this period that announcement was made of the formation of the ABA. It is my view that the NBA team owners began to bargain seriously on at least some of the Players Association proposals (unrelated to the restraints challenged here) only after it became clear that the ABA would be functioning as a rival league in the 1967-1968 season.

16. When the NBA team owners finally agreed to make concessions on the pension issue, the strike plan was called off by the Players Association and negotiations ensued. During these negotiations leading to the first collective bargaining agreement, dated October 24, 1967, it was the NBA owners who demanded and obtained a provision requiring each player to execute the Uniform Player Contract. With the exception of the terms relating to individual compensation and duration (which have always been individually negotiated), all of the provisions of the Uniform Player Contract set forth "player", not "owner", obligations. Throughout these negotiations the Players Association maintained its position that the reserve clause was illegal and unenforceable, and that it should be eliminated. This is reflected in the listing of "suggested changes to standard player contract" submitted to the NBA by the Players Association (Kennedy Affidavit, Exh. 16) which includes the following statement:

> "...paragraph 24 is the reserve clause and I have made clear my disagreement with this."

The NBA team owners steadfastly refused to discuss the elimination of the reserve clause from the Uniform Player Contract and the reserve clause was not eliminated from the Uniform Player Contract. Moreover, the Uniform Player Contract was not, as the NBA defendants claim, "comprehensively revised." It is clear from a comparison of the Uniform Player Contract in effect prior to October 1967

(copy annexed hereto as Exhibit A) with the succeeding Uniform Player Contract (Kennedy Affidavit, Exh. 2) that the NBA team owners agreed to only minor revisions of the Uniform Player Contract. The only change made with respect to the reserve clause was a change in its numeration from paragraph "24" to paragraph "22" as a result of the merger of prior paragraphs in the contract.

17. Contemporaneous with the execution of this first collective bargaining agreement, in correspondence conveniently overlooked by the NBA, the Players Association reaffirmed its position that the reserve clause was illegal and unenforceable. In a letter to Mr. Kennedy dated November 8, 1967 (copy annexed hereto as Exhibit B), I stated:

> "The Players Association also renews its statement of belief that Section 22 [reserve clause] of the Uniform Player Contract is contrary to law and unenforceable."

18. Mr. Kennedy responded by letter dated November 22, 1967, (copy annexed hereto as Exhibit C, also overlooked by the NBA) acknowledging the disagreement between the Players Association and the NBA over the legality and enforceability of the reserve clause. Mr. Kennedy stated:

> "While we note the opinion of the Players Association with respect to Section 22 of the Uniform Player Contract, please be advised that the members of the National Basketball Association do not, in any way, share your belief that Section 22 of the Uniform Player Contract is contrary to law and unenforceable."

1968

19. The Players Association again called for the elimination of the illegal reserve clause at the outset of negotiations in 1968. At the meeting in April 1968, referred to in paragraph 33 of the Kennedy Affidavit, the modification concept referred to therein was raised by me in an attempt to elicit some discussion of the reserve clause by members of the NBA negotiating committee, since previously they had refused to discuss the elimination of the reserve clause at all. In response to my suggestion, Earl Foreman, then owner of the Baltimore Bullets and a member of the NBA negotiating committee, stated in substance: "The NBA will never do away with or change its reserve clause." No further discussion of the reserve clause took place at this meeting, nor -- contrary to the statement in paragraph 33 of the Kennedy Affidavit -- was the subject discussed further in the negotiations which continued during the Summer of 1968 leading to the second collective bargaining agreement, dated August 29, 1968. The reserve clause in the Uniform Player Contract was neither eliminated nor modified.

1969

20. The Players Association's formal proposals of May 9, 1969 again included a demand for the elimination of the reserve clause (Kennedy Affidavit, Exh. 18).

21. I have never seen Exhibit 19 to the Kennedy Affidavit before. That exhibit purports to be a proposal put forth by me for the Players Association during negotiations leading to the November 7, 1969 collective bargaining agreement. This document was not prepared by me or anyone else for the Players Association and neither the Players Association nor I ever put forth the proposal embodied therein. It may be noted that the typeface of Exhibit 19 appears to be the same as the typeface of the Kennedy Affidavit itself.

22. I do recall that the substance of what is set forth on Exhibit 19 was discussed at a collective bargaining meeting prior to November 7, 1969, but not as a proposal of the Players Association. At the outset of the meeting I again reiterated the Players Association position that the reserve clause was illegal and should be eliminated. The substance of what is set forth on Exhibit 19 was mentioned by someone during the course of a discussion of the kinds of variations of the reserve clause which were being considered in other professional sports leagues.

23. The NBA claims that Exhibit 20 to the Kennedy Affidavit, is a copy of the owners' counter-proposal to Exhibit 19. While this alleged "counter-proposal" (which is titled "Owners Proposals" and not

counter-proposals) was presented orally by the NBA negotiating committee at some point in time during the 1969 negotiations and may have been shown to me at that time, I never received a copy. The proposal embodied in Exhibit 20 was the first and only proposal ever put forth by the NBA owners with respect to the reserve clause prior to the commencement of this action. And this proposal establishes that the owners then interpreted the existing reserve clause as a perpetual owners' option, exercisable by and for the benefit of the owners. Thus, since that proposal was for a reduction in the owners' option to five consecutive annual options, the reserve clause clearly had to be a perpetual one prior to such proposal. The owners' proposal was rejected by the Players Association on the grounds that such a reserve clause would still be illegal.

24. After the 1969 negotiations had been concluded, Howard Lichtenstein of the Proskauer firm (which represented the NBA), and who specifically was the NBA's labor counsel, sent a draft of the 1969 collective bargaining agreement to me for comment. With respect to paragraph 22 (the reserve clause), the draft included a statement to the effect that the parties would continue meeting to conduct negotiations. In a letter dated October 31, 1969 to Mr. Lichtenstein (copy annexed hereto as Exhibit D and again overlooked by the NBA), I once again pointed out that no agreement had ever been reached concerning the reserve clause and that in fact no agreement had ever been reached to meet to conduct negotiations regarding that clause. I stated as follows:

"Paragraph 22 is out. As I specifically indicated, we have no agreement to continue meeting to conduct negotiations."

The 1969 collective bargaining agreement dated as of November 7, 1969 was therefore executed without change in the reserve clause of the Uniform Player Contract.

1970

25. Following the commencement of the present action on April 4, 1970, the Players Association served its 1970 bargaining demands upon the NBA owners (copy annexed hereto as Exhibit E). In light of the pendency of the suit challenging, inter alia, the legality of the reserve clause, the Players Association omitted any reference to the reserve clause from these demands.

26. There was no collective bargaining on the reserve clause in the negotiations leading to the fourth collective bargaining agreement, dated October 8, 1970, and again there was no change in the reserve clause of the Uniform Player Contract.

27. The NBA defendants imply that Exhibit 21 to the Kennedy Affidavit shows collective bargaining on the reserve clause in 1970. This is untrue. That exhibit resulted from a conversation I had with George Gallantz who is not the NBA's labor negotiator but who was then and is now the NBA's lead trial lawyer in this case. Mr. Gallantz engaged me alone in conversation concerning the present lawsuit and its

possible settlement. During our conversation, I mentioned to him that a few players had obtained through individual negotiations a modification of the reserve clause in their own individual contracts. Mr. Gallantz asked me if he could see the language of such a modified reserve clause and suggested that I send it to him on a blank piece of paper (as NBA Exhibit 21 is), because he said he did not want the owners to know that he was discussing settlement of the litigation with anyone. Mr. Gallantz made it perfectly clear to me that he was not collectively bargaining and I know I was not doing so. It was under those circumstances that I sent my personal note and the attachment (Exhibit 21) to Mr. Gallantz.

1971

28. As in 1970, because of this action's pendency, the Players Association's formal collective bargaining proposals in 1971 (copy annexed hereto as Exhibit F) made no reference whatsoever to the reserve clause, and the subject was never discussed in the course of the collective bargaining negotiations.

29. The NBA defendants seek to turn the substance of their September 2, 1971 letter (Exhibit 22) into a collective bargaining meeting on the reserve clause. A meeting had been called between Mr. Gallantz and Mr. Millstein (who were not the labor negotiators for either side), for the

purpose only to discuss settlement of the lawsuit on the eve of the Senate Subcommittee hearings regarding the proposed merger. The letter was handed to me as I walked into the meeting. The fact is, as Mr. Kennedy admits (¶ 37), that plaintiffs' counsel informed the NBA representatives that this was not a labor meeting, it was a settlement meeting and discussed the contents of this letter only to the extent of stating that the proposal contained therein for team compensation as an appendage to the reserve clause was a totally unacceptable basis for the settlement of this litigation because the proposal was itself illegal.

30. The NBA September 2, 1971 letter advised us, as to part of the reserve clause, of the following unilateral decision of the Board of Governors:

> "It is the position of the NBA that article 22 permits but a single exercise of an option to renew for one year, and that the contract if so renewed carrys [sic] with it no further option to renew. NBA interprets article 22 to mean that if a player plays out its option year he is a free agent."

Since the NBA had previously interpreted the reserve clause as a perpetual owners' option (see ¶ 23, supra), this represented a unilateral change made in the reserve clause at the behest of the owners for their benefit, since as we shall see there is no such thing as a "free" agent.

31. The NBA states (Kennedy Affidavit, ¶ 38) that another change unilaterally made to the reserve clause in Exhibit 21 so as to eliminate the 25 per cent reduction in salary during the reserve year was "included" in the fifth collective bargaining agreement,

dated April 5, 1972. The fact is that this proposal was never discussed in collective bargaining negotiations leading to this agreement. The change was raised only after collective bargaining negotiations for that agreement had been completed and a draft of the agreement was prepared by the Proskauer firm and sent to me under cover of a letter from Howard L. Ganz (another Proskauer attorney), dated April 4, 1972 (annexed hereto as Exhibit G). Among other things, the letter states:

> "I have red-lined the changes in the Uniform Player Contract amendment. Where deletions were made, I have penciled in and then crossed out the old language. Ed [Edward Silver, NBA labor counsel] asked me to call your attention in particular to the deletion of '75% of' in paragraph 22."

32. Upon receipt of his April 4 letter, I telephoned Mr. Ganz on April 5, 1972, specifically to discuss this statement in his letter calling attention to the deletion of "75% of" in paragraph 22. Mr. Ganz stated to me that the reason it was mentioned was because it had not been discussed in collective bargaining, but related back to the September 2, 1971 letter. I told Mr. Ganz that the Players Association position is and always has been that the reserve clause is illegal, and that this change simply represented a lesser illegality but that the Players Association still maintained it was an illegal clause. In a follow-up letter to Mr. Ganz dated April 13, 1972 (copy annexed hereto as Exhibit H) forwarding executed copies of the collective bargaining agreement, I stated:

> "I hope you have told Ed Silver my answer to his deletion of '75% of' in paragraph 22 that I indicated to you by phone, namely that paragraph 22 is still illegal."

The NBA avoids any reference to Exhibits G and H. Thus, the statement in the NBA defendants' Memorandum (p. 17) that "paragraph 22 was also revised, without objection from the Players Association, to implement a benefit announced by the NBA in its letter of September 2, 1971" (i.e., the deletion of "75%") is both misleading and erroneous.

33. It is also clear that the team compensation proposal in the September 2, 1971 letter was not, as contended by the NBA, a proposal made in collective bargaining. It was made long after the litigation began, after the owners knew that the players would oppose the owners' merger exemption in Congress. Indeed, the letter expressly conditioned the proposal on obtaining Congressional approval for the merger, as it ended with:

> "While we hope to pursue this offer with you at once, there can of course, be no final agreement until we know the direction in which Congress is moving on the merger issue" (Exhibit 22, p.4).

Of course the Senate Committee later rejected team compensation as being illegal.

34. That the owners' team compensation offer was not part of collective bargaining between the Players Association and the NBA is proved also by the facts that following September 2, 1971 and prior to a meeting to discuss settlement of this lawsuit held in Chicago in October, 1971, the NBA indicated to us and to the ABA, that it would not insist on the team compensation provision as part of settlement. Then Mr. Millstein and I met with ABA and NBA representatives

in Chicago to discuss settlement again. But the NBA apparently changed its mind and again insisted on its team compensation settlement offer contained in the September 2, 1971 letter. (See Amended Answer of ABA ¶ 50, pp. 53-54). The NBA avoids reference to that settlement meeting.

1972

35. The Players Association proposals in 1972 for the current collective bargaining agreement again made no reference whatsoever to the reserve clause in light of the pendency of the present litigation. Again, there were no discussions of that subject in collective bargaining for that agreement, and there was no change in the reserve clause itself.

Reserve Compensation Scheme

36. In the Kennedy Affidavit (¶¶ 16-17) itself, the NBA described in writing for the first time anywhere, a new unilateral feature of the reserve system -- the reserve compensation scheme. This scheme is not a part of this or any prior collective bargaining agreement, was never proposed to the Players Association in collective bargaining, and was never the subject of collective bargaining. A different scheme for such compensation was proposed to settle this action in the NBA September 2, 1971 letter (Kennedy Affidavit, Exh. 22), but that settlement was never accepted by the players. Prior to receipt of Mr. Kennedy's Affidavit, the Players Association had never been advised by the NBA of any details, or of when, where and how this reserve compensation scheme had been adopted by the NBA team owners and unilaterally imposed upon the players. This reserve compensation scheme is not set forth

in the NBA Constitution and By-Laws annexed to the Kennedy Affidavit as Exhibit H. I first heard of its existence in March 1974 during another meeting with litigating counsel seeking to settle this action. No details were given and certainly no collective bargaining or any discussion took place concerning it. Certainly, there is no "free" agent.

37. In light of all these facts and, in particular, the Players Association's consistent position that the reserve clause is illegal and unenforceable and should be eliminated, the NBA's suggestion (Kennedy Affidavit ¶ 39) that the Players Association traded illegal clauses for other "concessions" is a self-serving invalidity.

Arbitration

38. The NBA's reliance on two recent arbitration proceedings (Kennedy Affidavit, ¶¶ 41-42) -- to imply that the Players Association somehow acquiesced in the legality of the reserve clause or that the Arbitrator passed on its legality -- is totally misleading and erroneous.

39. At the first arbitration, involving a dispute between Wilt Chamberlain and the Los Angeles Lakers, I appeared as counsel for the Players Association (not one of the parties). At the very outset of the arbitration I specifically stated:

> "... Under the procedures of our Arbitration, the Players Association must file the appeal on behalf of one of its members, who is Mr. Chamberlain.

> The only matter that is to be argued here is the matter concerning the proper exercise of Article 22 in the uniform player contract. In the uniform player contract, Paragraph 22 is the option clause. As you know, Peter [Arbitrator Peter Seitz], it is the position of the Players Association that that option clause is illegal and violates the anti-trust law and that it is not a proper clause and the legality or illegality of it is not subject to arbitration." (Transcript, pp. 3-4, copy annexed hereto as Exhibit I).

40. Counsel for the ABA teams involved and Mr. Furth agreed (Transcript, p. 4), and all parties expressly stipulated that the only question before the Arbitrator was:

> "Did the Lakers properly exercise the option provided for in Section 22 of the uniform players contract to retain the services of Wilton N. Chamberlain for the 1973-1974 player year?" (Transcript, p. 5 annexed as Exhibit I).

41. Similarly, in the other arbitration (relating to a players' All-Star Game) referred to by the NBA, its counsel, Mr. Silver, expressly conceded that the legality of the reserve clause was not an issue for the arbitrator, and that, in any event, he was not referring to that portion of paragraph 22 which sets forth the reserve (or option) feature. I stated:

> "We have argued and are in the process of arguing in the court that paragraph 22 violates antitrust laws, and I don't think it is necessary for your argument, and I would rather not discuss this paragraph, if we may."

Mr. Silver responded:

> "In the first place, I don't allege or contend that Mr. Seitz has any authority to decide any ramifications of the anti-trust laws. Mr. Seitz is here to interpret the collective bargaining contract, and that's his function, and I assume if Mr. Seitz does anything which you or we deem to be in violation of the law we will make such statement to a court, if necessary.
>
> In any event, Mr. Fleisher, the paragraph I read has nothing to do, I believe, with anything pending in the court, the second paragraph of 22." (Transcript, p. 35, annexed as Exhibit J).

That the NBA would omit reference to their own record admissions should not be condoned.

42. With respect to the NBA's motion to dismiss plaintiffs' complaint based on the asserted indispensability of the Players Association as a party to this action, the Players Association does not claim any interest in this action within the meaning of Rule 19. The foregoing facts make it clear that: (i) none of the intra-league or inter-league restraints at issue here are products of collective bargaining between the NBA and the Players Association; (ii) the restraints at issue here have not injured the Players Association, just the players; (iii) that the Players Association's interests are identical to those of plaintiffs and there are no conflicts between the players and the Association. The action can proceed in the absence of the Players Association. The parties charged with illegality are present and any judgment will bind them and the players. Thus, there is no need for the Players Association to be joined as a party. Certainly, the action should not be dismissed since the Players Association, if the Court so rules,

can be made a party. Indeed, the Players Association is already a party as a named counter and cross-defendant to the ABA's frivolous claims, but as the Court is aware, we have moved for summary judgment.

43. In conclusion, it is my belief that professional athletes -- like all other employees -- are not required to expend their collective bargaining strength to persuade their employers not to violate the law. I am advised and do believe that this Court is the proper forum for the adjudication of the antitrust claims which the plaintiff players have asserted. Contrary to Mr. Kennedy's belief (Kennedy Affidavit ¶45), I believe that resolution of these antitrust issues after the history of this litigation and the Congressional episode should not and cannot be removed to the picket line, but rather should remain here for proper judicial determination. To use Mr. Kennedy's words, resort to extra-judicial pressures will be "potentially destructive of so much that the NBA members and the players have worked for."

Lawrence Fleisher

Sworn to before me this

day of August, 1974.

Notary Public

Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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OSCAR ROBERTSON, WILLIAM BRADLEY, JOSEPH CALDWELL, ARCHIBALD CLARK, MELVIN COUNTS, JOHN HAVLICEK, DONALD KOJIS, JON McGLOCKLIN, McCOY McLEMORE, THOMAS MESCHERY, JEFFREY MULLINS, WESTLEY UNSELD, RICHARD VAN ARSDALE and CHESTER WALKER, individually and as representatives of all present and future active players in the National Basketball Association,

Plaintiffs,

- against -

70 Civ. 1526

NATIONAL BASKETBALL ASSOCIATION, a joint venture, MADISON SQUARE GARDEN CENTER, INC., MADISON SQUARE GARDEN CORPORATION, MILWAUKEE PROFESSIONAL SPORTS & SERVICES, INC., THE CAPITAL BULLETS BASKETBALL CLUB, INC. (formerly THE BALTIMORE BULLETS BASKETBALL CLUB, INC.), RIKO ENTERPRISES, INC., KINGS PROFESSIONAL BASKETBALL INC. (formerly CINCINNATI BASKETBALL CLUB COMPANY), BOSTON CELTIC BASKETBALL CLUB, INC. (formerly TRANS NATIONAL COMMUNICATIONS, INC.), ZOLLNER CORPORATION, ATLANTA HAWKS BASKETBALL, INC., CALIFORNIA SPORTS, INCORPORATED, THE CHICAGO PROFESSIONAL BASKETBALL CORPORATION, PHOENIX PROFESSIONAL BASKETBALL CLUB, GOLDEN STATE WARRIORS (formerly SAN FRANCISCO WARRIORS), SEATTLE SUPERSONICS CORPORATION, TEXAS SPORTS INVESTMENTS, INC. (formerly SAN DIEGO BASKETBALL CLUB), BUFFALO BRAVES, INC., CLEVELAND PROFESSIONAL BASKETBALL COMPANY and PRO BASKETBALL, INC., and AMERICAN BASKETBALL ASSOCIATION,

Defendants.

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CARTER, District Judge

O P I N I O N

I.

History of the Litigation

A. Nature of the Action

This action was instituted in 1970 pursuant to Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§15 and 26 [1], to recover treble damages, costs and injunctive relief for violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§1 and 2 [2] Defendants are the National Basketball Association (NBA) and the American Basketball Association (ABA). All the named plaintiffs, William Bradley, Joseph Caldwell, Archibald Clark, Melvin Counts, John Havlicek, Donald Kojis, Jon McGlocklin, McCoy McLemore, Thomas Meschery, Jeffrey Mullins, Oscar Robertson, Westley Unseld, Richard Van Arsdale and Chester Walker were active players with, [3] and the elected player representative of, one of the then 14 clubs of the NBA. [4] Plaintiffs sue on behalf of themselves, all presently active players, those who were active at the time the action was originally commenced, and future players of the NBA. Jurisdiction is asserted under 28 U.S.C. §§ 1331 and 1337.

B. Background Facts

This litigation began after reports in the spring of 1970 of a proposed merger between the NBA and the ABA. Plaintiffs' amended complaint [5] charges defendants with conspiring to restrain competition for the services and skills of professional basketball players through such devices as the college draft, the reserve clause in the Uniform Player Contract (the Uniform Contract), the compensation plan attached to the reserve clause, and various boycott and blacklisting techniques. The complaint further alleges that the NBA and the ABA seek to effectuate a non-competition agreement, merger or consolidation.

In May, 1970, this court (Tenney, J.) preliminarily enjoined the defendants from entering into "any merger, consolidation, or acquisition or combination by any means," except that defendants were permitted to negotiate a proposed merger for the sole purpose of petitioning Congress for antitrust exemption legislation. The Senate Judiciary Committee's recommendation that an exemption conditioned on substantial elimination of the various intra-league restraints be granted was not acceptable to the defendants, and no legislation on the matter has been promulgated.

In August, 1973, Judge Tenney's earlier order was modified by allowing the two leagues to negotiate a merger or consolidation on the condition that any merger or consolidation agreement "deal specifically with and indicate the disposition of uniform player contracts, the common draft, and the reserve clause ..., " and that the negotiations relating to those matters be conducted in the presence of plaintiffs' counsel or the general counsel of the National Basketball Players Association (Players Association). No agreement among the parties has yet been reached.

II

The Immedi e Controversy

A. Plaintiffs' Claims

1. Count One

Count One of the complaint alleges that at least since its inception in 1946, the NBA has engaged in a concerted plan, combination or conspiracy to monopolize and restrain trade and commerce in major league professional basketball by: (1) controlling, regulating and dictating the terms upon which professional major league basketball is played in the United States; (2) allocating and dividing the market of professional player talent; and (3) enforcing its monopoly and restraint of trade through boycotts,

blacklists and concerted refusals to deal. NBA's purported objective is the elimination of all competition in the acquisition, allocation and employment of the services of professional basketball players--all in violation of Sections 1 and 2 of the Sherman Act.

The following practices are cited as among the means used by the NBA to effectuate and advance the underlying objectives of the conspiracy:

(1) The College Draft is allegedly designed to prevent competition among member NBA clubs for what is virtually the exclusive source of basketball talent in the country. The system operates so that each NBA club is given the exclusive right to choose specific college players with whom it desires to negotiate. If the college player does not wish to negotiate or play for the NBA club which "owns" his rights, the player may not negotiate with or for any other NBA club;

(2) The Uniform Contract, entitled the "National Basketball Association - Uniform Contract" [6] must be signed by every college player who agrees to play with one of the NBA clubs after he is "drafted," and by every veteran player each year. The contract provides that the player shall play basketball for his club or its assignees exclusively until "sold" or "traded"; that the club has the absolute right to

sell, exchange, assign or transfer the Uniform Contact on the same terms to another club; and that if the player refuses to play, the club may either terminate the Uniform Contract or seek an injunction to prevent the player from playing basketball for anyone else;

(3) The Reserve Clause is a part of the Uniform Contract which, if a player refuses to sign the Uniform Contract for the next playing season, empowers the club unilaterally to renew and extend the Uniform Contract for one year on the same terms and conditions including salary.[7] Any "traded" or "sold" player is bound to his new club by the reserve clause. Plaintiffs contend that the reserve clause gives the NBA clubs the express and unilateral right to keep renewing the Uniform Contract each year so long as the player refuses to execute the Uniform Contract, thus binding the player to one club for his entire playing career.

(4) Boycotts, Blacklisting and Refusals to Deal are allegedly utilized as well. Plaintiffs contend that no NBA club will negotiate with a player to play for another club who has signed or refused to sign the Uniform Contract, and is thus under "reserve". Nor will any NBA club negotiate for the services of a player who is voluntarily retired from another club, under suspension, in military service, disabled or injured. Any NBA club which contracts or negotiates with such a player is similarly boycotted, blacklisted or otherwise penalized;

(5) The New League is off-limits to NBA players. Plaintiffs assert that the NBA has used the practices summarized in (1) through (4) above to prevent the players not only from negotiating freely with member clubs of the NBA, but also from negotiating with or playing for clubs in any rival league. [8]

In sum, Count One sets forth the acts and practices of the NBA which are purportedly designed "to prevent in perpetuity any player from playing professional basketball for anyone other than the NBA club to which the exclusive rights to his services have been granted by defendants for his lifetime" [9]

2. Count Two

The circumstances which give rise to Count One [10] also underlie Count Two. Plaintiffs contend that even if the reserve clause is not deemed to be a perpetual right of renewal, and instead is interpreted and enforced as a one-year option after the Uniform Contract term expires, nonetheless, the contract is still in violation of Sections 1 and 2 of the Sherman Act. The same combination and conspiracy alleged and described in Count One prevent any other NBA club from negotiating with or hiring

a player during this one-year option period. After the expiration of the one-year period, the player who would try to negotiate with another NBA club, or the club which agreed to negotiate with the player, would be subjected to boycott, blacklisting, refusals to deal, or other penalties which the defendants allegedly impose to enforce their combination to monopolize and restrain trade.

This count additionally attacks what is designated "predatory" tactics waged by the NBA on the ABA. After the expiration of the one-year option provided under the Uniform Contract, the existence of a rival league is said to provide an "escape route" from the anti-competitive structure of the NBA since a player could attempt to negotiate with clubs of that league. Since 1967, however, the complaint states that the NBA has unlawfully combined or conspired to preserve its monopoly position and further its illegal restraints by employing certain devices to destroy the ABA. Those attempts have failed, according to the plaintiffs, and the rival league now flourishes to the decided and obvious financial advantage of present and future NBA players. [11]

This failure to destroy the ABA has allegedly led to a new combination or conspiracy by the NBA to suppress competition by an attempted merger or consolidation of the two leagues which will lead to the demise of the ABA as a competitive force. Among the means employed by the NBA, even prior to actual merger, is the enactment of a non-competition agreement between the leagues and their clubs, and secret negotiations with the ABA to effectuate the merger of the two leagues.

3. Count Three

Count Three joins the ABA as a defendant and is based on the aforesaid merger plans and non-competition agreement. Essentially it charges both the NBA and the ABA with violations of Sections 1 and 2 of the Sherman Act. Consummation of the merger, it is alleged, would eliminate all actual and potential competition between the defendants; and the effectuation of the non-competition agreement would have this effect prior to a formal merger. The unlawful practices described in Counts One and Two would continue either in the surviving league, or if no merger occurs, would remain in effect in the NBA. [12]

4. The Remaining Counts

Count Four embraces an asserted violation by the NBA defendants of New York's antitrust law. [13]

Count Five is similarly brought against the NBA for common law violations in each state in which it exhibits professional basketball games, and jurisdiction is asserted on both Counts Four and Five on pendent jurisdiction.

Plaintiffs seek declaratory and injunctive relief, against both intra-(reserve clause, player draft, compensation plan, boycotts and blacklisting) and inter-(merger or non-competition agreement) league restraints and treble damages, costs and attorneys' fees.

B. The Instant Motions

Plaintiffs move for a class action determination which NBA opposes. NBA, on its part, moves for summary judgment, pursuant to Rule 56, F.R.Civ.P., in respect of Count One, part of Count Two, and Counts Four and Five. NBA has also moved, pursuant to Rules 12 and 19, F.R.Civ.P., to dismiss the complaint for failure to join an indispensable party. ABA moves for summary judgment in respect of Count Three, and seeks dissolution of the preliminary injunction in effect since 1970. Both defendants claim jurisdiction is lacking since primary jurisdiction rests with the National Labor Relations Board. [14]

III

Does Primary Jurisdiction Lie with the NLRB? 15

In Local 189, Amalgamated Meat Cutters & Butcher Workmen of North America, AFL-CIO v. Jewel Tea Co., 381 U.S. 676 (1965), review was limited to two questions. The first concerned labor exemption, which will be considered hereafter; the second was

> "[w]hether a claimed violation of the Sherman Antitrust Act which falls within the regulatory scope of the National Labor Relations Act is within the exclusive primary jurisdiction of the National Labor Relations Board." 381 U.S. at 684 n.3.

Justice White, without dissent, rejected the primary jurisdiction contention and refused to stay the case to await a NLRB determination as to whether the uniform closing hours was a "term or condition of employment." The Court based its conclusion on three grounds. First, "courts are themselves not without experience in classifying bargaining subjects as terms or conditions of employment." Second, "the doctrine of primary jurisdiction is not a doctrine of futility." It does not require the expense and delay of an administrative proceeding when "the case must eventually be decided on a controlling legal issue wholly unrelated" to that which was referred for administrative determination. Third, there may be lacking an available procedure for obtaining a NLRB

determination. The Board "does not classify bargaining subjects in the abstract but only in connection with unfair labor practice charges of refusal to bargain." 381 U.S. at 686-87. [16]

Additionally, the defendants' contentions are unsupported by the decisional law in this Circuit. This court in Intercontinental Container Transport Corp. v. New York Shipping Association, 312 F. Supp. 562 (S.D.N.Y.) (Mansfield, J.), rev'd on other grounds, 426 F. 2d 884 (2d Cir. 1970), rejected the argument that jurisdiction was lacking since the plaintiff had raised the same issues as unfair labor practices before the NLRB. The court said:

> "We are faced not with potential conflict between state regulation and national labor policy, but with the intersecting provisions of two federal statutes. That certain activities may arguably constitute an unfair labor practice ... does not oust a federal court of jurisdiction over a Sherman Act claim arising out of the same activities as part of a combination with employers to restrain competition against the latter, and this is true whether or not the Sherman Act plaintiff has invoked the jurisdiction of the Board over his unfair labor practice claims." 312 F. Supp. at 571.

The Second Circuit affirmed this holding, and, citing Jewel Tea, stated that an independent claim of pre-emption was erroneous. 426 F. 2d at 887.

In any event, the antitrust issues involved here are not within the "special competence" of the NLRB, and therefore the doctrine of primary jurisdiction is inapplicable, see United States v. Western Pac. R.R., 352 U.S. 59, 64 (1956); Denver Union Stockyard Co. v. Denver Livestock Commission Co., 404 F. 2d 1055, 1059 (10th Cir. 1968), cert. denied, 394 U.S. 1014 (1969); Fischer v. Kletz, 249 F. Supp. 539, 544 (S.D.N.Y. 1966), and the factual disputes to be resolved concerning the history of collective bargaining between the players and the NBA are unquestionably proper subjects for determination by the court. See Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, Inc., 351 F. Supp. 462, 481-86, 506-507 (E.D. Pa. 1972) (hereafter Philadelphia Hockey); Boston Professional Hockey Association, Inc. v. Cheevers, 348 F. Supp. 261, 267-68 (D. Mass.), remanded, 472 F. 2d 127 (1st Cir. 1972). The two cases relied upon by defendants, International Association of Heat and Frost Insulators and Asbestos Workers v. United Contractors Association, Inc., 483 F. 2d 384, 402-403 (3d Cir. 1973), and Carpenters District Council v. United Contractors Association of Ohio, Inc., 484 F. 2d 119, 122-23 (6th Cir. 1973), are inapposite. They involved situations in which the Board, in contrast to the instant situation, had particular expertise. Accordingly, defendants' contentions are rejected.

IV

The Motion to Dismiss

NBA has moved under Rule 19, F.R.Civ.P.,[17] to dismiss the complaint because of failure to name the Players Association as a party. In the alternative, the NBA contends that the Players Association should be joined as a party in this action. I find that the Association is neither an indispensable party under Rule 19(b) nor one that ought to be joined pursuant to Rule 19(a).

The purpose of Rule 19(a) has been defined as a requirement "to bring before the court all persons whose joinder would be desirable for a just adjudication of the action... ." Wright & Miller, Federal Practice and Procedure: Civil §1604, at 32 (1972). Rule 19(a) is applicable when (1) failure to join an absentee would prevent complete relief or (2) where an absentee "claims an interest relating to the subject of the action and is so situated" that its absence will impair its ability to protect that interest or will leave any of the parties subject to multiple or inconsistent obligations, and the risk of the latter is substantial. See, e.g., Morgan Guarantee Trust Co. v. Martin, 466 F. 2d 593, 598 & n.6 (7th Cir. 1972); FTC v. Manager Retail Credit Co.,

357 F. Supp. 347, 354 (D.D.C. 1973); but see Window Glass Cutters League of America, AFL-CIO v. American St. Gobain Corp., 47 F.R.D. 255, 258 (W.D. Pa. 1969), aff'd, 428 F. 2d 353 (3d Cir. 1970).

The practical, and not the theoretical, controls. See Provident Tradesmens Bank & Trust Co. v. Patterson, 390 U.S. 102, 106-107, 110 (1968).[18] The Association has claimed no interest relating to this action.[19] The possibility of harm to the Association, see Zwack v. Kraus Bros. & Co., 93 F. Supp. 963 (S.D.N.Y. 1950), or the risk of multiple obligations has not been demonstrated. The mere fact that a decision in this case could conceivably affect the Association does not automatically require its joinder. See, e.g., Provident Tradesmens Bank, supra, 390 U.S. at 110; ACLU v. Board of Public Works, 357 F.Supp. 877, 884 (D. Md. 1972); Hoots v. Commonwealth of Pennsylvania, 359 F. Supp. 807, 822 (W.D. Pa. 1973), appeal dismissed, 495 F. 2d 1095 (3d Cir. 1974). If it later appears that joinder is desirable or necessary, it can then be effectuated. See Advisory Committee's Note to Rule 19, reprinted in 39 F.R.D. 89, 93 (1966); ACLU v. Board of Public Works, supra, 357 F. Supp. at 885.

Cases holding that a union which has negotiated a collective bargaining agreement with an employer is an

indispensable party in a suit by an employee against the employer, are cited by the NBA to support its contention that joinder of the Association is required under Rule 19(b). It is conceded that a union should be joined when the suit will directly affect the union's interest in the operation of a bargaining agreement. See Lynch v. Sperry Rand Corp., 62 F.R.D. 78 (S.D.N.Y. 1973); Neal v. System Board of Adjustment, 348 F. 2d 722 (8th Cir. 1965); Hodgson v. School Board, New Kensington-Arnold School District, 56 F.R.D. 393 (W.D. Pa. 1972); Reyes v. Missouri-Kansas-Texas R.R., 53 F.R.D. 293 (D. Kan. 1971); Morris v. Steele, 253 F. Supp. 769 (D. Mass. 1966). Those cases, however, have no application here where it is yet uncertain that the restraints involve the operation of a collective bargaining agreement. The statement of Judge Bryan in Lynch, supra, 62 F.R.D. at 86, that "[h]aving negotiated with ... [the employer] over the contents of the collective bargaining agreements, the absent unions clearly have an interest in litigation which seeks to rewrite portions of those agreements" is inapplicable.

Moreover, most of the cases relied upon by defendants concerned claims by employees whose interests conflicted with other groups of employees in the same bargaining unit, or with the union itself. Neal, supra; Lynch, supra; Hodgson, supra; Steele, supra; Reyes, supra; and English v. Seaboard Coastline Ry., 465 F.

2d 43 (5th Cir. 1972). It is undisputed for purposes of the motion for summary judgment that all the members of the Association have a common interest in the success of this action. [20] Finally, determination of whether a party should or must be joined can only be arrived at in the context of the particular litigation; a flexible case by case approach must be employed consonant with what the equities and facts require. Provident Tradesmens Bank, supra, 390 U.S. at 118; Wright & Miller, supra, Civil §1612, at 122.

There is no need to join the Players Association at this time, especially where the interest of the Association appears to be adequately represented by the plaintiffs. See Gilbert v. General Electric Co., 59 F.R.D. 273 (E.D. Va. 1973). Accordingly, the motion to dismiss is denied.

V

The Motion to Dissolve the Preliminary Injunction

ABA seeks dissolution of the preliminary injunction to prevent the merger or agreement of non-competition between the two leagues. That injunction was issued more than four years ago. The argument, that Section 1 of the Norris-LaGuardia Act, 29 U.S.C. §101, mandates its dissolution is patently meritless. The Norris-LaGuardia Act does not apply in an antitrust case, even one which arguably involves a labor dispute. Allen Bradley Co. v. Local 3, IBEW, 325 U.S. 797 (1945); Los Angeles Meat & Provision Drivers Union v. United States, 371 U.S. 94 (1962); International Container Transport Corp., supra; Anderson-Friberg, Inc. v. Justin R. Clary & Son, 98 F. Supp. 75 (S.D.N.Y. 1951). The contention that the injunction consented to by the ABA when issued initially in 1970 and in continuous effect since, should be lifted now is obviously makeweight; made, apparently, in the hope that the court might be caught nodding and in a state of somnambulism sign the order lifting the ban. The motion is denied.

VI

The Motions for Summary Judgment

A. The State Law Counts

NBA argues that summary judgment should be entered in its favor in respect of Counts Four and Five because the interstate nature of professional basketball precludes state antitrust regulation. I agree.

In Flood v. Kuhn, 316 F. Supp. 271 (S.D.N.Y. 1970), aff'd, 443 F. 2d 264 (2d Cir. 1971), aff'd, 407 U.S. 258 (1972), the petitioner raised state statutory and common law challenges to baseball's reserve system, which encompassed many of the practices in dispute in this litigation. [21]

Judge Cooper denied both state claims on the ground that baseball's unique exemption from federal antitrust law, see Toolson v. New York Yankees, Inc., 346 U.S. 356 (1953), compelled similar exemption from state antitrust regulation. 316 F. Supp. at 279-80; see State v. Milwaukee Braves, Inc., 31 Wis. 2d 699, 144 N.W. 2d 1, 16-18, cert. denied, 385 U.S. 990 (1966). The Court of Appeals affirmed, but on the ground that state antitrust regulation would be an impermissible

burden on interstate commerce. 443 F. 2d at 268. The United States Supreme Court held that "[a]s applied to organized baseball ... [the statements of the District Court and the Court of Appeals] adequately dispose of the state law claims." 407 U.S. at 284-85.

Though somewhat ambiguous, I read the statement in Justice Blackmun's opinion as approving both bases for the lower courts' rejection of Flood's state law claims. Judge Cooper's decision would not be controlling here, since professional basketball is subject to federal antitrust regulation. See Haywood v. National Basketball Association, 401 U.S. 1204, 1205 (1971), and as a result no danger exists of diversity of treatment if state law were also to apply. But the opinion of the Court of Appeals is unquestionably applicable and controlling.[22]

When Flood was decided, baseball had 24 teams operating in 24 "home" cities with the teams divided into two leagues. NBA has 18 teams operating in 18 "home" cities, and those teams are divided into two

conferences. Baseball and basketball are in the same business, which is the staging of sports contests for public view, and there is no dispute that "professional basketball involves substantial volumes of interstate trade and commerce." Complaint at ¶17. The motion for summary judgment in respect of Counts Four and Five is granted.

B. The Labor Issues

Taken together, the ABA and NBA motions for summary judgment effectively challenge plaintiffs' claims in their entirety. Both defendant Associations assert that plaintiffs are precluded from seeking through antitrust litigation the right to negotiate freely with any team of their choice and a bar to any merger or combination between the two leagues.

The two leagues claim that the complaint has tried to cast in antitrust terms a series of demands and issues which naturally and lawfully belong on the bargaining table. The intent of the suit is to increase plaintiffs' individual bargaining power. This, it is argued, conflicts with the policy announced in the National Labor Relations Act, 29 U.S.C. §151. [23] The defendants' more fundamental contention, however, is that they are protected against the impact of the antitrust laws by a labor exemption.

1. Plaintiffs' Standing to Sue Under the Antitrust Laws

It is undoubtedly true that the intent of Congress was and is to encourage collective bargaining as the means of settling labor disputes. See, e.g., Section 2 of the Norris-LaGuardia Act, 29 U.S.C. 102; the National Labor Relations Act, 29 U.S.C. §151; Fibreboard

Paper Products Corp. v. NLRB, 379 U.S. 203, 211 (1964). Surely, this policy constitutes a federal commitment to a bargaining system which "of necessity subordinates the interest of an individual employee to the collective interests of all employees," Vaca v. Sipes, 386 U.S. 171, 182 (1967); see also NLRB v. Allis-Chalmers Manufacturing Co., 388 U.S. 175, 180 (1967). In fact, Section 9(a) of the National Labor Relations Act provides that the representative of the bargaining unit shall be the exclusive agent for bargaining relating to wages, hours and other conditions of employment. 29 U.S.C. §159(a); see generally NLRB v. Allis-Chalmers, supra; J. I. Case v. NLRB, 321 U.S. 332 (1944); Western Addition Community Organization v. NLRB, 485 F. 2d 917, 924 (D.C. Cir. 1973).

Section 4 of the Clayton Act, 15 U.S.C. §15, grants standing for antitrust suits to any "person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws." Courts have consistently allowed plaintiffs to sue their employers for alleged antitrust violations of the nature here asserted. In Anderson v. Shipowners' Association, 272 U.S. 359 (1926), a seaman sued for himself and for all other members of the Seaman's Union against the Association, challenging the use of an employment registry. [24]

The Supreme Court reversed a dismissal of the complaint, sustaining, inter alia, the right of the plaintiff to assert his claim. That Anderson was a union member, or that a bargaining agreement may or may not have been in effect, did not appear to be determinative.

In Nichols v. Spencer International Press, Inc., 371 F. 2d 332 (7th Cir. 1967), an ex-encyclopedia salesman sued his former employer and another publisher who had refused to hire him. The action attacked on antitrust grounds a "no-switching" agreement whereby each defendant promised not to hire any former employees of the other for six months after termination of the former employment. The court reversed the grant of summary judgment and the entry of an order with respect to antitrust issues in favor of defendants, relying in part on a Second Circuit decision which ten years earlier had declared a similar agreement to constitute an unreasonable restraint of trade. [25] The Seventh Circuit said:

> "one who has been damaged by loss of employment as a result of a violation of the antitrust laws 'is injured in his business or property' and thus entitled to recovery under 15 U.S.C.A. §15 ... . [T]he interest invaded by a wrongful act resulting in loss of employment is so closely akin to the interest invaded by impairment of one's business as to be indistinguishable in this context." 371 F. 2d at 334.

More recently this court (Mansfield, J.) in Cordova v. Bache & Co., 321 F. Supp. 600 (S.D.N.Y. 1970), dealt with the issue. There, the president of the American Association of Securities Representatives sued various brokerage firms which had unilaterally agreed to reduce the commissions paid to securities representatives. It was claimed that the agreement would have the effect of eliminating wage competition by the establishment of an inviolate "going rate." [26] Judge Mansfield ruled that neither the president nor the Association itself had standing to bring the claim; the president lacked standing because he was not an employee of any of the defendant firms and the Association lacked standing because it could not, under the antitrust laws, assert the rights of its members. The court permitted the substitution of several employees as plaintiffs, and the standing requirements were met.

In the sports area, the standing of players to assert antitrust violations similar to those alleged here has generally not been questioned. In the Philadelphia Hockey case, Judge Higginbotham specifically held that players threatened with injury through the enforcement of the reserve clause could sue their employers:

> "Conduct by the NHL which tends to eliminate competition between actual and/or potential competitors is actionable by players who have been or who are likely to be injured thereby." 351 F. Supp. at 518.

Standing has been found to exist for hockey players challenging the reserve system, Boston Professional Hockey Association, supra; for a basketball player challenging the college draft system, Denver Rockets v. All-Pro Management, Inc., 325 F. Supp. 1049 (C.D. Cal. 1971); for a golfer challenging a group boycott, Blalock v. Ladies Professional Golf Association, 359 F. Supp. 1260 (N.D. Ga. 1973); for a football player challenging (a) blacklisting following a violation of the reserve clause, Radovich v. National Football League, 352 U.S. 445 (1957), and (b) the reserve clause and other intra-league restraints, Kapp v. National Football League, _____ F. Supp. _____, C-72-537 (N.D. Cal. Dec. 20, 1974).

Cases cited by the ABA are inapposite. Union members here are not trying to negotiate their own contracts while a collective bargaining agreement is in force, NLRB v. Allis-Chalmers, supra, 388 U.S. at 180; NLRB v. U. S. Sonics Corp., 312 F. 2d 610, 615 (1st Cir. 1963); nor are plaintiffs negotiating as a splinter group, Medo Photo Supply Corp. v. NLRB, 321 U.S. 678 (1944). This litigation

does not present a situation where only the "superstars" will benefit, Jacobs and Winter, Antitrust Principles and Collective Bargaining by Athletes: Of Superstars in Peonage, 81 Yale L.J. 1, 7-10 (1971); Philadelphia Hockey, 351 F. Supp. at 515; and an individual union member is not here suing his union or employer for a breach of a collective bargaining agreement, Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965).

Similarly, the NBA's attempt to distinguish a line of cases generally supportive of plaintiffs' right to sue on antitrust grounds is unpersuasive. These authorities are characterized by NBA as cases where "strangers" to a collective bargaining process have sued [27] or, alternatively, cases where employees have been allowed to sue due to the absence of a collective bargaining relationship. [28] But cases in the first category never involved suits by employees; they all were brought by employers. And in the latter group, courts made no mention of the lack of bargaining as decisive or even significant in their decisions allowing employees to sue. Plaintiffs have standing to bring this suit.

2. Labor Exemption from Antitrust Laws

There is no operative labor exemption barring or protecting the defendants from being sued for antitrust violations. The statutory bases for labor's exemption from the application of the antitrust laws are found in Sections 6 and 20 of the Clayton Act, 15 U.S.C. §17, 29 U.S.C. §52. [29] A simple and concise answer to defendants' contention is that the exemption extends only to labor or union activities, and not to the activities of employers.

In Allen Bradley, supra, the Court reviewed the history of federal labor laws and antitrust legislation and held that the purpose behind the passage of the Clayton Act was to clarify the then-existing confusion regarding the vulnerability of labor unions to the prohibitions of the Sherman Act. It found that the Clayton Act had a twofold purpose: to make clear that (1) certain trade practices among businessmen were illegal; and that (2) the same or similar practices among or by labor unions were lawful. [30] The Court stated that Congress had intended by enactment of the Clayton Act to reverse earlier decisions applying antitrust principles to concerted union activities; the exemption was enacted to protect union activity against the wrongful application of the

Sherman Act, 325 U.S. at 803-804, and that judicial reluctance to apply the Clayton Act by its own terms, see, e.g., Duplex Printing Press Co. v. Deering, 254 U.S. 443 (1921), had led to the passage of the Norris-LaGuardia Act, 29 U.S.C. §101, which

> "protect[ed] the rights of employees to organize into unions and engage in 'concerted activities for the purpose of collective bargaining or other mutual aid and protection.'" 325 U.S. at 805, (Emphasis added).

Earlier, in United States v. Hutcheson, 312 U.S. 219 (1941), the Court had declared that all three acts--Sherman, Clayton and Norris-LaGuardia--must be read in conjunction with each other to determine whether concerted activities of unions are prohibited under the antitrust laws. Discussing the labor exemption, it had held that:

> "So long as a union acts in its own self-interest and does not combine with non-labor groups, the licit and the illicit under §20 are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means." 312 U.S. at 232 (footnote omitted).

The Court concluded in Allen Bradley, as a result of its review of the statutory and decisional law, that unions would lose their exemptions once they aided "non-labor groups to create business monopolies and to control the marketing of goods and services." 325 U.S. at 808.[31]

Allen Bradley made clear that the "labor exemption" was created for the benefit of unions. While later cases revealed the possibility of a circumscribed exemption for employers, which might arise derivatively, and become effective when employers are sued by third parties for the activities of unions, the protection of the exemption is afforded only to employers who have acted jointly with the labor organization in connection with or in preparation for collective bargaining negotiations. See, e.g., Cardova v. Bache & Co., supra, at 607.

Judge Higgenbotham, in the Philadelphia Hockey case, in rejecting the NHL's attempt to employ the exemption, stated:

> "The labor exemption which could be defensively utilized by the union and employer as a shield against Sherman Act proceedings when there was bona fide collective bargaining, could not be seized upon by either party and destructively wielded as a sword by

> engaging in monopolistic or other anti-competitive conduct. The shield cannot be transmuted into a sword and still permit the beneficiary to invoke the narrowly carved out labor exemption from the anti-trust laws." 351 F. Supp. at 499-500.

In the Cordova case, Judge Mansfield refused to dismiss the securities representatives' antitrust suit on the ground that the labor exemption protected the employers: [32]

> "[T]he sole purpose and effect of the section is to exempt activities and agreements on the part of labor ... organizations with respect to their furnishing labor in the market place. ...
>
> "It is readily apparent that Congress ... was concerned with the right of labor and similar organizations to continue engaging in such activities, including the right to strike, not with the right of employers to band together for joint action in fixing the wages to be paid by each employer." 321 F. Supp. at 605, 606. [33]

Nonetheless, defendants rely on a twofold "test" which purports to determine when the exemption is available to employers. They argue that the appropriate test is as follows:

> "The test for applicability of the labor exemption which emerges from Jewel Tea and Pennington, is two-fold: 1) Are the challenged practices directed against non-parties to the relationship; if they are not, then 2) are they mandatory subjects of collective bargaining? If the answer to No. 1 is no, and to No. 2 yes, the practices are immune. ..." NBA Memorandum at 28.

Support for this "test" is allegedly found in United Mine Workers of America v. Pennington, 381 U.S. 657 (1965), and Jewel Tea, supra, which presented the Court with the opportunity to re-examine its holdings in Hutcheson and Allen Bradley, supra.

In Pennington, a small coal company cross-claimed against the UMW, challenging on antitrust grounds the terms of a multi-employer collective bargaining agreement between the union and other, larger, coal operators. The Court, relying on Allen Bradley, found that the union had lost its exemption when it combined with non-labor groups to eliminate competition from the market. Justice White stated, at 665-66, that:

> "[W]e think a union forfeits its exemption from the antitrust laws when it is clearly shown that it has agreed with one set of employers to impose a certain wage scale on other bargaining units. One group of employers may not conspire to eliminate competitors from the industry and the union is liable with the employers if it becomes a party to the conspiracy (emphasis added).

There is no statement or suggestion in Pennington that an employer has an exemption from an antitrust suit by its employees, or by any other party. It was assumed that the large coal operators would have been liable regardless of the union's liability.

In Jewel Tea, several unions had entered into identical collective bargaining agreements with all retail employers in the meat industry; the clause in dispute provided for uniform closing hours in all the meat departments. One employer attacked that clause arguing that he had only signed the agreement under threat of strike. As in Pennington, the fundamental question was whether the antitrust laws applied to the unions: could the agreement, obtained by the unions for their own benefit, be attacked, or was it exempt? No mention was made of labor exemption for employers. This issue, as framed by Justice White, was:

> "whether the marketing-hours restriction, like wages, and unlike prices, is so intimately related to wages, hours and working conditions that the unions' successful attempt to obtain that provision through bona fide, arm's-length bargaining in pursuit of their own labor union policies, and not at the behest of or in combination with non-labor groups, falls within the protection of the national labor policy and is therefore exempt from the Sherman Act." 381 U.S. at 689-90 (emphasis added).

The exemption was held applicable.

Justice Goldberg, joined by Justices Harlan and Stewart, took a broader view, and it can be argued that his language does support to a limited degree the second half of the test proffered by defendants. According to Justice Goldberg, the balancing of labor and antitrust policies, as advocated by Justice White, was unnecessary, [34] for "collective bargaining activity concerning mandatory subjects of bargaining under the Labor Act is not subject to the antitrust laws." 381 U.S. at 710. [35]

Whatever support may be found in the Jewel Tea concurring opinion for defendants' test is completely undermined by the Court's explicit statement in Pennington that:

> "[t]his is not to say that an agreement resulting from union-employer negotiations is automatically exempt from Sherman Act scrutiny simply because the negotiations involve a compulsory subject of bargaining, regardless of the subject or the form and content of the agreement. ... [T]here are limits to what a union or an employer may offer or extract in the name of wages, and because they must bargain does not mean that the agreement reached may disregard other laws." 381 U.S. at 664-65 (emphasis added).

See Philadelphia Hockey, supra, 351 F. Supp. at 518. "Mandatory subjects of collective bargaining" do not carry talismanic immunity from the antitrust laws. Moreover, nothing that Justice Goldberg said actually supports any part of the "test" defendants propose. [36]

Nor does the "test" which supposedly "flows" from Pennington and Jewel Tea find support in later decisions. In this respect, defendants' principal reliance on Carroll v. American Federation of Musicians of the United States and Canada, 372 F. 2d 155 (2d Cir. 1967), aff'd in part and rev'd in part, 391 U.S. 99 (1968), is misplaced. In Carroll, union-expelled orchestra leaders alleged that certain union regulations, particularly that establishing price floors, were violative

of the antitrust laws. The Second Circuit held that the price floor regulation was a per se violation of Sections 1 and 2 of the Sherman Act. The Supreme Court reversed, holding that the union's labor exemption from the Act extended to the price floor regulation. Neither court, however, based its decision on defendants' proposed twofold "test".

The Second Circuit's first inquiry was whether there was, as in Pennington, a conspiracy between the union and the orchestra leaders to eliminate competition, fix prices or further any other commercial restraint. As the regulations were unilaterally imposed by the union, and merely acquiesced in by the leaders, it was held that no conspiracy existed to preclude exemption.[37] The court concluded that the price floor regulation was "not a subject of such direct and overriding interest to the unions ... that it is a mandatory subject of collective bargaining." Id. at 165.[38] In reversing, the Supreme Court stated that the basic question was "whether the price floors in actuality operate to protect the wages of [other union members]." 391 U. S. at 108. Finding that the floors were intimately related to wages, the Court ruled that the regulations came within the exemption.

The more recent Second Circuit decision in Intercontinental Container Transport Corp., supra, clearly sets out what I think is the guiding test which emerges from the decisional law in the labor exemption area. In Intercontinental, plaintiff was a warehouse company which attacked a General Cargo Agreement entered into by the Longshoremen's Union and the Shipping Association. The agreement provided that, in return for a shift to containerization, the Association would enter into certain work preservation practices, in effect preventing plaintiff and others from competing with the Association. The Court of Appeals reversed a preliminary injunction issued in favor of the plaintiff, holding that the agreement was protected by the exemption pursuant to the following yardstick:

> "The test of whether labor union action is or is not within the prohibitions of the Sherman Act is (1) whether the action is in the union's self-interest in an area which is a proper subject of union concern and (2) whether the union is acting in combination with a group of employers." 426 F 2d at 887.

Judge Hays found that the containerization agreement was well within the union's self-interest:

> "The provisions of the collective agreement have as their object the preservation of work traditionally performed by longshoremen covered by the agreement." Ibid.

After finding that the provisions were within the area of proper union concern, Judge Hays turned to the second part of the Second Circuit test and found that "far from aiding and abetting a violation of the Sherman Act by a group of business men, the union here, acting solely in its own self-interest, forced reluctant employers to yield to certain of its demands." Id. at 888.

The application of defendants' proposed "test" would result in an anomaly. The first question--whether the practices are addressed to third parties to the relationship--would be answered "yes". The second question--whether it was a mandatory subject of collective bargaining--is an irrelevance and was never asked. The basic inquiry must focus on determining whether the controverted practices or regulations were in the union's own interest. The test proposed by NBA has no validity.

Mandatory Subjects of Collective Bargaining

The practices here under attack are not mandatory subjects of bargaining. [39] Reliance is placed on Judge Cooper's statement in Flood, supra, 316 F. Supp. at 283, that "[b]oth management and the Players' Association recognize the reserve system to be a mandatory subject of collective bargaining." However, Judge Cooper doubted that the reserve clause was a mandatory subject of collective bargaining, Id. at 278, [40] and neither the Second Circuit nor the Supreme Court found it necessary to pass on this issue. 443 F. 2d at 268; 407 U.S. at 285.

The other decisions cited by defendants are also inapplicable. The statement in NLRB v. Wooster Division of Borg-Warner Corp., 356 U.S. 342 (1958), that a clause which regulates relations between employer and employee comes within the scope of Section 8(d) of the National Labor Relations Act is not a yardstick to determine whether a provision is a mandatory subject of bargaining. The Court in Borg-Warner was merely comparing the clause in dispute with one admittedly within the contours of Section 8(d). Moreover, the provision involved was held to be "lawful," Id. at 349, while here the issue of

"lawfulness" spawns the controversy. Similarly, Allied Chemical & Alkali Workers of America v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971), did not hold that a practice or provision which vitally affects the terms and conditions of employment is necessarily a mandatory subject of bargaining. There, the bargaining unit for current employees sought to negotiate certain insurance benefits for retired workers. The Court simply held that former employees' benefits are not "terms and conditions" of present workers' employment.

Two other cases involving third parties are likewise inapposite. Local 24, Teamsters Union v. Oliver, 358 U.S. 283, 293-95 (1959), concerned an agreement which established a minimum rental that carriers had to pay to truck owners who drove in place of union employees; it was held that the objective of the rental agreement was to protect the negotiated wage scale from evasion by payments to the owner-drivers of rentals which did not cover operating costs. Fibreboard, supra, held only that "contracting out"--the replacement of employees in the bargaining unit with those of an independent contractor--was a mandatory subject of bargaining.

Defendants argue that "contracting out" is somewhat analogous to some of the practices challenged here because "contracting out" also determines which employer will hire employees for a particular job. However, Fibreboard warned that its conclusions did "not encompass other forms of 'contracting out' or 'subcontracting' which arise daily in our complex society." 385 U.S. at 215. "Terms and conditions of employment" was not meant to reach every issue that might interest unions or employers. See, e.g., Fibreboard, supra, Id. at 220-21, 223-24 (Stewart, J.;, concurring); Westinghouse Electric Corp. v. NLRB, 387 F. 2d 542, 545-48. (4th Cir. 1967).

I conclude at least tentatively since the record is not yet complete, that the reserve clause, the player draft, and the merger or non-competition agreement are not mandatory subjects of collective bargaining. [41] Defendants' argument that the above cited cases and others [42] require a contrary holding is wholly unpersuasive.

C. Determination of The Validity of the Inter- and Intra-League Restraints on Motions for Summary Judgment

There apparently is no genuine issue regarding the existence of the challenged NBA practices; aside from the compensation plan, they are set out and regulated by various documents annexed as exhibits, including the NBA Constitution and By-Laws, and the Uniform Contract. Nor is there any dispute over the fact of the contemplated merger or agreement of non-competition.

On the basis of the documentary evidence submitted in support of the NBA motion for summary judgment, practically all of the intra- and inter-league restraints appear to be per se violative of the Sherman Act. When a player signs the present Uniform Contract, he agrees to play ball "only for the Club and its assignees" (Uniform Contract ¶5), the club is given the right to assign the contract (Id. ¶10), and the player agrees to report to his new club within a specified period of time (Id. ¶12). In addition, the reserve or option clause (Id. ¶22) binds the player to negotiate and deal only with the club which contracted with the player. After the contract's termina-

tion, the club may unilaterally renew the player's obligation to play for that team for an additional year.

Plaintiffs claim that the NBA's reserve clause grants each club a perpetual right of renewal. NBA defendants, on the other hand, assert that as the clause is presently interpreted, a player becomes a "free agent" once his club has exercised its option. After the player plays for the club for the one-year period, and assuming he does not sign a new contract, he becomes a free agent. Defendants' Memorandum at 9. This interpretation, however, must be read in the light of the adoption by the defendants of a compensation plan similar in purpose and effect, presumably, to the "Rozelle Rule," recently struck down as a violation of the Sherman Act in Kapp v. National Football League, supra. See generally Contractual Rights and Duties of the Professional Athlete - Playing the Game in a Bidding War, 77 Dickinson L. Rev. 352, 353, 387-93 (1973) (hereafter Playing the Game in a Bidding War).

The free agent can sign with another team, but it then "becomes the obligation of the player's new team to compensate his old team for loss of the player." Affidavit of J. Walter Kennedy, Commissioner of the NBA, ¶16 (hereafter Kennedy Affidavit). The Rozelle Rule

contemplates that compensation include awarding to the past club one or more players of the acquiring club; even future draft choices are vulnerable in the compensation scheme.[43] The effect of the compensation system resulted in few NFL players playing out their options,[44] and the system was expressly condemned by the Senate Judiciary Committee in its report on the proposed NBA-ABA merger.[45]

The record does not reveal either the language or operation of the compensation plan, it not being set out in the NBA Constitution, By-Laws or Uniform Contract. Defendants expressly state that the NBA plan is dissimilar in some respects from the Rozelle Rule. Kennedy Affidavit ¶17. It is uncertain whether a perpetual reserve was ever employed by the NBA, and, if it was, when it was superseded by the one-year reserve-compensation system.

The NBA's annual "college draft" allocates the rights to negotiate with eligible college players among the teams; those with the worst won-lost records choose first. A NBA club which has drafted a college player holds the exclusive right to negotiate with and sign the player. Whereas the reserve clause prevents teams from competing for veteran players, the draft prevents bidding for rookies. The net effect of the

two mechanisms is to force a player to deal only with the NBA club which "owns" the rights to him. If the player refuses to go along with the system, he will not play ball in the NBA; blacklisting or boycotting to punish the recalcitrant player or the renegade club completes the control devices used.

The merger and/or agreement of non-competition between the two leagues is another mechanism whose effect would be a restraint of trade. Either would result in the total elimination of competition between the two leagues for the services of college players, free agents, or those intending to break their contracts and jump leagues. The end of the bidding war between the NBA and the ABA would mean the loss of negotiating power which NBA players obtained in 1967.

Some degree of economic cooperation which is inherently anti-competitive may well be essential for the survival of ostensibly competitive professional sports leagues. See Flood, supra, 316 F. Supp. at 275-76. Without these mechanisms unrestrained price wars for the service of the most proficient players will ensue, or so runs the argument, with the wealthiest teams capturing the top talent and the poorer teams facing demise due to the loss of fans and profit. See The Super-Bowl and the Sherman Act: Professional Team Sports and the Antitrust Laws, 81 Harv.L. Rev. 418, 421

(1967) (hereafter Sports and the Antitrust Laws). Because survival necessitates some restraints, however, does not mean that insulation from the reach of the antitrust laws must follow. Less drastic protective measures may be the solution. See, e.g., S. Rep. No. 92-1151, 92d Cong., 2d Sess. (1972);[46] Flood, supra, 316 F. Supp. at 275-76 & n.12; Sports and the Antitrust Laws, supra, at 424-25.

In Standard Oil Co. v. United States, 221 U.S. 1 (1911) and Chicago Board of Trade v. United States, 246 U.S. 231 (1918), the Supreme Court formulated a "rule of reason" test. Under this approach courts were required to examine the agreement or practice in relationship to the history and economics of the industry in which it was employed. If supported by clear economic necessity, and its dominant purpose was not restraint of trade, the practice would be declared reasonable and lawful. Certain practices were found to be so anti-competitive, however, that they have been declared illegal per se, which leaves a court free to avoid the complicated task which follows the utilization of the rule of reason test.[47] Compare Kapp v. National Football League, supra.

Among the practices which have been declared per se violations of the Sherman Act are horizontal price-fixing at the same level of competition, United States v. Socony-Vacuum Oil Co., 310 U.S. 150 (1940); territorial division of markets, Timken Roller Bearing Co. v. United States, 341 U.S. 593 (1951); and secondary or group boycotts, Klor's, Inc. v. Broadway-Hale Stores, Inc., 359 U.S. 207 (1959). The player draft and perpetural reserve system are readily susceptible

to condemnation as group boycotts based on the NBA's concerted refusal to deal with the players save through these uniform restrictive practices. See Klor's, Inc., supra; Associated Press v. United States, 326 U.S. 1 (1945); Fashion Originators' Guild of America, Inc. v. FTC, 312 U.S. 457, 465 (1941). The two control mechanisms are also analogous to price-fixing devices condemned as per se violative of the Sherman Act, for the draft and a perpetual reserve system allow competing teams to eliminate competition in the hiring of players and invariably lower the cost of doing business, United States v. Sealy, Inc., 388 U.S. 350 (1967); United States v. Socony-Vacuum Oil Co., supra; see also Mandeville Island Farms, Inc. v. American Crystal Sugar Co., 334 U.S. 219, 241-42 (1948); American Tobacco v. United States, 328 U.S. 781, 801-803 (1946). In addition the player draft and a perpetual reserve system can be viewed as devices creating illegal horizonal territorial allocations and product market divisions. See Burke v. Ford, 389 U.S. 320 (1967); United States v. Sealy, Inc., supra.

The player draft had its only substantial test to date in Denver Rockets v. All-Pro Management, Inc., supra. In that case Spencer Haywood, then playing with the Rockets of the ABA, contracted to play for the Seattle team in the NBA. Haywood sought a preliminary injunction barring the enforcement of a NBA By-Law which prohibited qualified players from negotiating with any NBA club until four years after high school graduation. The court said

> "There is a substantial probability in light of all the evidence presented to this Court that the so-called 'college draft system' ... constitutes a violation of the antitrust laws. ..." 325 F. Supp. at 1056,

and declared the four-year rule to be a "group boycott" in violation of the antitrust laws. [48]

A perpetual reserve clause in effect in the National Hockey League (NHL) has been held in three cases to violate the Sherman Act. In Boston Professional Hockey Association, supra, the court refused to enforce the reserve clause to prevent a player from jumping to the World Hockey League because the Boston Bruins had "not shown a probability that these Standard Player's Contracts will be found to be legally valid and enforceable in the face of the serious threat to their legality posed by the provisions of the Sherman Act." 348 F. Supp. at 268. [49]

In Nassau Sports v. Hampson, 355 F. Supp. 733 (D. Minn. 1972), the court ruled that the reserve clause:

> "seems, plausibly, one aspect of a contractual scheme constituting a violation of sections 1 and 2 of the Sherman Antitrust Act." 355 F. Supp. at 735.

In the third case, Philadelphia Hockey, supra, Judge Higginbotham concluded that, as a matter of law, either a perpetual reserve system or one limited to three years' duration violates Section 2 of the Sherman Act as an unlawful monopolization. The court hesitated to declare that the NHL reserve clause was per se violative of Section 1, due in part to its reservation that a competitive balance among teams could be maintained in the absence of any restraints.

The consummation of the merger or non-competition agreement would result in the total elimination of competition in the major league market. Such complete monopolization is per se violative of Sections 1 and/or 2 of the Sherman Act. See, e.g., United States v. First National Bank & Trust Co., 376 U.S. 665, 669-70 (1964); United States v. Grinnell Corp., 384 U.S. 563, 570-71, 576 (1966); United States v. Manufacturers Hanover Trust Co., 240 F. Supp. 867, 955 (S.D.N.Y. 1965). Absent special Congressional approval, mergers of rival leagues

would be an antitrust violation: in 1966, the NFL and the American Football League sought to end their price war by going to Congress and getting a special exemption, 15 U.S.C. §1291. This approach remains available, of course, to defendants.

A motion for summary judgment is not a substitute for a trial of disputed facts; yet partial summary judgment may be entered in an antitrust case as to those matters where evidentiary data and affidavits show no genuine issue of material fact exists. See Rule 56(d), F.R.Civ.P.; White Motor Co. v. United States, 372 U.S. 253, 259 (1963) ("some of the law in this area is so well developed that where, as here, the gist of the case turns on documentary evidence, the rule at times can be divined without a trial"); see also First National Bank v. Cities Service Co., 391 U.S. 253 (1968); Blalock v. Ladies Professional Golf Association, supra; Denver Rockets v. All-Pro Management, Inc., supra; Yale Transport Corp. v. Yellow Truck & Coach Manufacturing Co., 3 F.R.D. 440 (S.D.N.Y. 1944).

While the plaintiffs have not sought summary judgment in their favor on any of the disputed issues but have merely opposed defendants' motions on the ground

that genuine issues of fact render summary judgment inappropriate, the weight of authority is that a court may, sua sponte, render summary judgment in favor of the opposing party despite the absence of a cross-motion. See Wright & Miller, supra, Civil §2720, at 467-71. A barrier to taking definitive action on these issues at this time, however, is the sharp controversy between the plaintiffs and the NBA defendants as to whether the controversial restraints came into being in the context of arm's-length union-employer negotiations, or were imposed unilaterally by the NBA.

There is a total divergence of views between plaintiffs and defendants in addressing themselves to this question. There is disagreement as to when the Players Association was recognized as the exclusive bargaining agent for the players; whether the reserve clause and the assignment of contract provisions were ever the subject of collective bargaining; whether the draft, assignment and trading provisions of the Uniform Contract, and the compensation plan are regulated by collective bargaining agreements entered into between the NBA and the players; whether the reserve clause, draft, assignment and trading provisions of the Uniform Contract, and the compensation plan have been unilaterally adopted by the NBA and imposed on the players. Whether

the restraints were ever the subject of serious bargaining, or whether they were acquiesced in in return for other benefits, or whether they were baldly imposed by the NBA [50] cannot be determined except at trial.

Resolution of this conflict may be the most critical issue in this litigation. Conceivably, if the restrictions were part of the union policy deemed by the Players Association to be in the players' best interest, they could be exempt from the reach of the antitrust laws. See Jewel Tea, supra, 381 U.S. at 690; International Container Transport Corp., supra, 426 F. 2d at 887; National Dairy Products Corp. v. Milk Drivers and Dairy Employees Union Local 680, 308 F. Supp. 982, 986 (S.D.N.Y. 1970). The proper inquiry in respect of this controversy is whether the challenged restraints were ever the "subject of serious, intensive, arm's-length collective bargaining." Philadelphia Hockey, supra, 351 F. Supp. at 499; see Flood, supra, 407 U.S. at 293-96 (Marshall, J., dissenting); Boston Professional Hockey Association, supra, 348 F. Supp. at 267-68.

I must confess that it is difficult for me to conceive of any theory or set of circumstances pursuant to which the college draft, blacklisting, boycotts and refusals to deal could be saved from Sherman Act condemnation, even if defendants were able to prove at trial their highly dubious contention that these restraints were adopted at the behest of the Players Association. Plaintiffs, on their part, have vigorously asserted that no collective bargaining ever took place as to any of these restraints, and that certainly they are not the kind of matter which a union would consider, seek or obtain as being in its own best interest and that of its members. The life of these restrictions, therefore, appears to be all but over, although their formal interment must await further developments in this case. Any merger or non-competition agreement between the NBA and ABA without Congressional approval similarly would be clearly unlawful, and defendants are presently under injunctive restrictions in that regard.

While a perpetual reserve system would also appear to be a per se violation of the Act, whether such a system exists, and how it operates and came into being are unclear. Moreover, I must accept defendants' contention at this stage of the proceedings that the reserve system presently operative is limited to a one-year

renewal, coupled with a compensation plan and that the system does not duplicate the Rozelle plan. See United States v. Diebold, Inc., 369 U.S. 654, 655 (1962); Sterling National Bank & Trust Co. v. Fidelity Mortgage Investors, _____ F. 2d _____, 74-1432 (2d Cir. Jan. 9, 1975). Therefore no tentative conclusion as to the reserve system's legality will be projected prior to trial on the merits. See Poller v. Columbia Broadcasting System, Inc., 368 U.S. 464, 467, 472-73 (1962); White Motor Co. v. United States, supra. Accordingly, defendants' motions for summary judgment are denied.

VII

Motion for Class Action Determination

Plaintiffs move, pursuant to Rule 23(c)(1), F.R.Civ.P., for a determination that this action may be maintained as a class action, either under 23(b)(1) and/or (2) and alternatively under 23(b)(3). The proposed class is comprised of all active players in the NBA from the date of the commencement of this action in April of 1970 through the present, and all future players in the NBA prior to the date of final judgment. Eleven plaintiffs are currently active players and three no longer play in the NBA.

Essentially, plaintiffs claim that defendants' illegal activities affect each plaintiff and proposed class member in a "substantially identical" manner.[51] They maintain that they and the class they seek to represent are a homogeneous group which is and has been the target of the NBA's conspiracies. NBA[52] primarily raises the four following arguments against the proposed class determination: (1) the inclusion of future players makes the class indefinable; (2) potential conflicts of interest among the class members preclude adequate representation by the named plaintiffs; (3) the class action is an inferior method for handling this controversy; and (4) the proposed class action falls without any of the Rule 23(b) categories.

A. Is the Proposed Class Sufficiently Defined?

It is apparent that the named plaintiffs are members of the proposed class; that common questions of law and fact are present and that the class meets the numerosity requirement. NBA contends that the class lacks sufficient definition [53], that the plaintiffs' claims are not typical of the proposed class, and that the plaintiffs will not fairly and adequately represent the interests of the members.

The NBA's claim that the proposed class lacks definition is premised on an erroneous assumption. Defendants misread a portion of the plaintiffs' moving affidavit in asserting that the inclusion of future active players up to the date of judgment raises the spectre of a class hundreds of thousands strong. In the affidavit, Laurence Fleisher merely said that out of hundreds of thousands of high school and college ballplayers, fewer than fifty generally are good enough to join the ranks of the NBA each year. [54] The "monster" class cases cited by the NBA, see, e.g., Eisen v. Carlisle & Jacquelin, 417 U.S. 156 (1974) (all odd lot purchasers or sellers in a four year period); Boshes v. General Motors Corp., 59 F.R.D. 589 (N.D. Ill. 1973) (all purchasers of General Motors automobiles); United Egg Producers v. Bauer International Corp., 312 F. Supp. 319 (S.D.N.Y. 1970) (all consumers of eggs), are therefore not in point.

The class is neither amorphous, nor imprecise; at the present time there are three hundred and sixty-five class members. The fact that fifty to a hundred more members may be joining the class does not make it unmanageable. See Price v. Skolnick, 54 F.R.D. 261, 263 (S.D.N.Y. 1971). Moreover, it has been held that the "[f]ailure to state the exact number or to identify individually every member of the class does not militate against the maintenance of a class action." Herbst v. Able, 47 F.R.D. 11, 21 (S.D.N.Y. 1969); see also Dolgow v. Anderson, 43 F.R.D. 472, 492 (E.D.N.Y. 1968); Fischer v. Kletz, 41 F.R.D. 377, 384 (S.D. N.Y. 1966); Wright & Miller, supra, Civil §1760, at 580. This court can determine at any time whether a particular individual is a member of the class, see Eisman v. Pan American World Airlines, 336 F. Supp. 543, 547 (E.D. Pa. 1971), for it will always be composed of "a well-defined, discrete and limited number of NBA basketball players all of whom are well known and will be readily identifiable by exact name at all stages of this action." [55] This factor makes this case distinguishable from Eisman, supra (all past and future purchasers of tickets from Pan American) and from Coniglio v. Highwood Services, Inc., 60 F.R.D. 359, 363 (W.D.N.Y. 1972) (all past, present and future ticketholders of the Buffalo Bills).

Courts have approved classes which included future members. See, e.g., Taylor v. Safeway Stores, Inc., 333 F. Supp. 83, 84 (D. Colo. 1971); Manning v. General Motors Corp., 14 F.R. Serv. 2d 1083, 1085 (N.D. Ohio 1971), aff'd, 466 F. 2d 812 (6th Cir. 1972), cert. denied, 410 U.S. 946 (1973); Rios v. Steamfitters Local 638, 54 F.R.D. 234, 237 (S.D.N.Y. 1971); cf. Air Line Stewards & Stewardesses Association Local 550 v. American Airlines, Inc., 490 F. 2d 636, 638 (7th Cir. 1973), cert. denied, _____ U.S. _____, 94 S. Ct. 2406 (1974) ("class consisted of all present and former American stewardesses ... who had been, desired to be, or would in the future desire to be, pregnant"); Arey v. Providence Hospital, 55 F.R.D. 62, 64 (D.D.C. 1972) ("class action brought on behalf of all black and female employees who have sought, might have sought, seek or might seek, employment and promotion by the defendant"). In view of the size of the class and that plaintiffs have agreed to give notice of the proceedings to all present and future members, the notice requirement does not raise a serious issue.[56]

B. Typicality and Fair and Adequate Representation

Rule 23(a)(3) requires that the representatives' claims be typical of the proposed class; 23(a)(4) requires that the representatives fairly and adequately protect the interests of the members. Plaintiffs and defendants agree that the requirements of these two subsections are virtually the same, see Eisen v. Carlisle & Jacquelin, 391 F. 2d 555, 562-63 (2d Cir. 1968); duPont v. Perot, 59 F.R.D. 404, 409-10 (S.D.N.Y. 1973), to wit, the interests of the named plaintiffs must be co-extensive with the interests of the proposed class members, and the plaintiffs' interests may not be antagonistic or adverse to interests of the class.

Plaintiffs assert not merely co-extensive interests, but interests identical "in every material respect" to those of members of the proposed class. [57] It appears that the NBA conspiracy to monopolize professional basketball through intra- and inter-league restraints previously discussed has affected, affects, or will affect each member of the class in a similar way, and it appears that every NBA player has the same interest in ending these restraints. [58] While this conclusion is tentative, and may be altered as the case progresses to trial, it is fully supported on the record.

NBA vigorously contests this harmonious family portrait, and instead paints a seascape of stormy differences among the proposed class members. Potential conflicts between past and present players, among present players, and among past players are alleged. The conflicts are of such magnitude, it is argued, that the class should not be maintained; at the very least the NBA urges the formation of a multitude of subclasses.

The first conflict purportedly arises between the active players who primarily seek injunctive, as opposed to monetary, relief and the past players who only seek treble damages. The supposed disinterest of the latter group as to the future of the NBA [59] puts them at odds with the present (and future) members, who seek a financially secure league in which to display their talents. [60] A finding of intra-class conflict here would have some support in recent cases. See Free World Foreign Cars, Inc. v. Alfa Romeo, 55 F.R.D. 26, 29 (S.D.N.Y. 1972); Van Allen v. Circle K Corp., 58 F.R.D. 562, 564 (C.D. Cal. 1972); Matarazzo v. Friendly Ice Cream Corp., 62 F.R.D. 65 (E.D.N.Y. 1974); Gaines v. Budget Rent-A-Car of America, 16 F.R.Serv. 2d 60, 64-65 (N.D. Ill. 1972); Seligson v. Plum Tree, Inc.,

61 F.R.D. 343 (E.D Pa. 1973); but see McMackin v. Schwinn Bicycle Co., 1972 CCH Trade Cas. ¶74,220 (N.D. Ill. 1972); Jacobi v. Bache & Co., Inc., 16 F.R. Serv. 2d 71 (S.D.N.Y. 1972); Gardner v. Awards Marketing Corp., 55 F.R.D. 460, 464 (D. Utah 1972). In opposition, plaintiffs retort that the supposed conflict is speculative and without foundation; that there were no "past" players in the class when the suit was originally commenced; that eleven affidavits filed in response to this past-present antagonism refute the claimed conflict; that all players, past and present, seek damages for the same acts, and also seek to eliminate those acts; that three of the named plaintiffs are past players who would insure that the interests of past players are represented; that no evidence has been introduced showing that the league would be injured, let alone destroyed, by a final adjudication either awarding damages or injunctive relief against the defendants; and finally, that former players do care what happens to the NBA. [61]

NBA next contends that "new" present players "may well believe" that this action will destroy the NBA. It is also alleged that those present players who have acquired limited approval rights over trades, and the four players with "no-cut" provisions, [62] do not have

the same interests which other present players possess in challenging the restraints. Plaintiffs answer that first, the purported conflict between "new" and "old" present players is unsupported; rather, they claim that the "new" present players have interests identical to the "old" present players. [63] Second, the contract provisions negotiated by several players have nothing to do with the restraints that bottom the complaint.

NBA also claims that the past players who are now part of management in either the NBA or ABA "could hardly be expected to share the interests of other retired NBA players," [64] and raises the possibility that past players who are now playing in the ABA may favor a merger with the NBA. Plaintiffs respond with six affidavits from the "management" past players which directly contravene the assertion of antagonism. [65] The claim that ABA past players seek a merger cannot be credited since Zelmo Beaty, former NBA player and then-president of the ABA Players Association, is on record in opposing the merger, [66] and in the present status of professional basketball, players in both leagues view prospects of merger with misgivings as adversely affecting their interests. [67]

Class action determination will not be denied, nor will the formulation of subclasses be required in the absence of a showing that the alleged potential conflicts are real probabilities and not mere imaginative speculation. See Green v. Wolf Corp., 406 F. 2d 291, 299 (2d Cir. 1968), cert. denied, 395 U.S. 977 (1969); Price v. Skolnick, supra; Feder v. Harrington, 52 F.R.D. 178, 182 (S.D.N.Y. 1970); Jacobi v. Bache & Co., Inc., supra, 16 F.R. Serv. 2d at 74; cf. Leisner v. New York Telephone Co., 358 F. Supp. 359, 372 (S.D. N.Y. 1973). I find the interests of the plaintiffs are not adverse to those of the class.

Obviously the decision that the requirements of Rules 23(a)(3) and (4) for class action determination are met here is not embedded in stone. [68] All such determinations are merely tentative, Green v. Wolf, supra, 406 F. 2d at 298 & n.10, and may be revoked or amended at a later time. Wright & Miller, supra, Civil §1785, at 137-38, and cases cited therein; General Motors Corp. v. City of New York, 501 F. 2d 639, 646-47 (2d Cir. 1974); City of Philadelphia v. Emhart Corp., 50 F.R.D. 232, 235-36 (E.D. Pa. 1970).

The four-year history of this litigation is sufficient indication that the named plaintiffs and their counsel will fairly and adequately protect the interests of the class. [69]

C. The Suit May Properly Proceed under Rule 23(b)(1)

Having found that the prerequisites of Rule 23(a) are met, the next inquiry is whether the suit falls under any of the three 23(b) categories. It is clear that 23(b)(2) is not applicable.

Under Rule 23(b)(2), a class action is appropriate when "the party opposing the class has acted or refused to act on grounds generally applicable to the class," and the named plaintiffs are seeking "final injunctive relief or corresponding declaratory relief."

The first yardstick has clearly been met, for the NBA has acted, through the intra-league restraints, and threatens to act, through the inter-league restraints, in a consistent manner toward all the class members. But 23(b)(2) certification is inappropriate when substantial damages are claimed in addition to permanent injunctive relief.

All players, past and present, who constitute this class seek treble damages for Sherman Act violations; moreover, there is a distinct possibility that evidence will be adduced at trial showing that the former NBA players who initially approved this suit are only interested in monetary relief. Class actions are generally not maintainable under this provision when money damages comprise a significant, if not enormous, portion of the total relief requested. [70] The Advisory Committee has stated that 23(b)(2) "does not extend to cases in which the appropriate final relief relates exclusively or predominately to money damages." [71] See Eisen, supra, 391 F. 2d at 564. Nonetheless, some courts have allowed a 23(b)(2) class action where the requested damages were ancillary to the injunctive relief. [72] It cannot realistically be contended that treble damages sought here by over 365 persons are ancillary or appurtenant to injunctive relief.

Our inquiry is, therefore, limited to 23(b)(1) and 23(b)(3). Rule 23(b)(1) authorizes the maintenance of a class action where "necessary to prevent possible adverse effects, either on the parties opposing the class or on absent class members, that might result if separate actions had to be brought." Wright & Miller, supra,

Civil §1772, at 4. Rule 23(b)(1)(A) allows a class action when individual suits would create the possibility of inconsistent or varying adjudications that would "establish incompatible standards of conduct for the party opposing the class"; 23(b)(1)(B) seeks to avoid the risk that separate adjudications might impair the interests of other class members. The circumstances of this case, and in particular the nature of much of the relief sought, suggest that both clauses are applicable. I have already indicated that the college draft, a perpetual reserve clause, boycotts, and a proposed merger, absent Congressional approval, or a non-competition agreement are illegal. Any later decision in this case which might grant permanent injunctive relief against these or other intra-league restraints, or, as to the merger, which may convert the preliminary injunction into a final one, necessarily obviates the danger which the prosecution of separate suits engenders. Zachary v. Chase Manhattan Bank, 52 F.R.D. 532 (S.D.N.Y. 1971). 73

That separate actions could establish incompatible standards of conduct for the NBA is well within the realm of possibility. For example, if this action were allowed to continue only for the benefit of the named plaintiffs, it is conceivable that other members

of the proposed class would file similar complaints in other courts. [74] The court might grant injunctive relief, another court might refuse, and a third may give relief which differs in material respects from the first. Differing results in the individual actions would impair the NBA's ability to "pursue a uniform continuing course of conduct" where pragmatic considerations require that the defendants act in the same manner to all members of the class. Wright & Miller, supra, Civil §1773, at 10-11. The decision of any court could also, "as a practical matter," [75] affect the rights of the class members not before that particular court. [76]

Ample authority supports the maintenance here of a class action under Rule 23(b)(1), see Zachary v. Chase Manhattan Bank, supra; Jacobi v. Bache & Co., Inc., 16 F.R. Serv. 2d 70, 71 (S.D.N.Y. 1971); Mungin v. Florida East Coast Ry., 318 F. Supp. 720 (M.D. Fla. 1970), aff'd per curiam, 441 F. 2d 728 (5th Cir.), cert. denied, 404 U.S. 897 (1971); Dale Electronics, Inc. v. R.C.L. Electronics, Inc., 53 F.R.D. 531 (D.N.H. 1971); Van Gemert v. Boeing Co., 259 F. Supp. 125, 130-31 (S.D.N.Y. 1966); Technograph Printed Circuits, Ltd. v. Methode Electronics, Inc., 285 F. Supp. 714 (N.D. Ill. 1968); Sultan v. Bessemer-Birmingham Motel Associates, 322 F. Supp. 86 (S.D.N.Y. 1970),

though other cases suggest a different result, see Free World Foreign Cars, Inc. v. Alfa Rom[illegible] supra, 55 F.R.D. at 29 n.9 (franchise); Van Allen [illegible]le K Corp., supra, 58 F.R.D. at 565 (franchise); Goldman v. First National Bank, 56 F.R.D. 587, 590-91 (N.D. Ill. 1972) (Truth in Lending Act); Kenney v. Landis Financial Group, Inc., 349 F. Supp. 939, 951 (N.D. Iowa 1972) (same); Rodriguez v. Family Publications Service, Inc., 57 F.R.D. 189, 192-93 (C.D. Cal. 1972) (same); Alsup v. Montgomery Ward & Co., 57 F.R.D. 83, 91-92 (N.D. Cal. 1972) (same); Bogosian v. Gulf Oil Corp., 62 F.R.D. 124, 131-32 (E.D. Pa. 1973) (dealership). In line with the philosophy enunciated in the Second Circuit's opinions in Eisen and Green v. Wolf, supra, that Rule 23 be given a liberal construction with error, if any, on the side of certification, I hold that this action is maintainable under 23(b)(1).

Alternatively, this suit could be maintained pursuant to Rule 23(b)(3). That subsection states that a class action is maintainable when

> "the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy."

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Defendants do not seriously dispute the plaintiffs' contentions that common questions exist, and predominate here. It has become almost axiomatic that allegations of conspiracy in violation of the Sherman Act satisfy the "predominance" requirement of this subsection. [77] The only argument the NBA makes in objection to certification under 23(b)(3) is that a class action would not be a "superior method" to resolve the issues raised by the complaint. The better procedure, they argue, is for the disputes to be aired through the collective bargaining process. It has been indicated tentatively, however, that these issues are mandatory subjects of collective bargaining. Moreover, an examination of the four factors which a court must consider in a (b)(3) determination persuades me that a class action would be both economical and proper. The first factor provides that a court must take account of the interest that individual class members may have in controlling the prosecution of this action in separate suits. Aside from the speculative musings of intra-class conflict, no claim has been made that individual members have such an interest. Indeed, every then-active player authorized the commencement of this suit in 1970; widespread player opposition to the proposed merger was also revealed in the hearings before the Senate Subcommittee on Antitrust and Monopoly. [78]

The second factor calls the court's attention to the "extent and nature of any litigation concerning the controversy already commenced by or against members of the class." To my knowledge no similar litigation is currently pending before any other court, and the one case which considered an antitrust challenge to an aspect of the player draft was commenced after this complaint was filed and has since been settled. [79] Thus no threat of multiplicitous or inconsistent adjudications looms before me.

The third factor, "the desirability or undesirability of concentrating the litigation of the claims in the particular forum," is very likely to be satisfied, too. This district is an appropriate place to focus the litigation, as more defendants have their principal places of business here than in any other district. See Siegel v. Chicken Delight, Inc., 271 F. Supp. 722, 725 (N.D. Cal. 1967); Advisory Committee's Note to Rule 23, 39 F.R.D. 98, 102-104 (1966). The last consideration calls for an analysis of the "difficulties likely to be encountered in the management of a class action." Here, the size of the class is not large enough to make administration of the suit difficult, the claims of class members are substantially the same, and the members are both identifiable and subject to notice.

There is no need, however, to determine that this class is maintainable under Rule 23(b)(3). When a choice exists between (b)(1) and (b)(3) certification, the court should order that the action proceed under (b)(1) exclusively, so that the opt-out privilege is unavailable. See Zachary v. Chase Manhattan Bank, supra, 52 F.R.D. at 534; Van Gemert v. Boeing Co., supra, 259 F. Supp. at 130; Muncin v. Florida East Coast Ry., supra, 318 F. Supp. at 730; Research Corp. v. Pfister Associated Growers, Inc., 301 F. Supp. 497, 500 (N.D. Ill. 1969). Accordingly, it is ordered, pursuant to Rule 23(c)(1), that this suit be maintained as a class action under Rule 23(b)(1). The class will be comprised of the approximately 365 players who are or were active players for member clubs of the NBA from the date of the commencement of this suit to the present and those who become active players prior to the date of final judgment. Costs of notice to all class members will be borne by plaintiffs.

Summary of Determinations

The motion to dismiss the complaint is denied. The motion to dismiss Counts Four and Five of the complaint is granted. The motion for class action determination is granted. The motion to dissolve the preliminary injunction is denied. The motions for summary judgment are denied.

It is SO ORDERED.

Dated: New York, New York
February 14, 1975

ROBERT L. CARTER
U.S.D.J.

FOOTNOTES

1. "§ 4. Suits by persons injured; amount of recovery

"Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

"§ 16. Injunctive relief for private parties; exception

"Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections 13, 14, 18, and 19 of this title, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue ..."

2. "§1. Trusts, etc., in restraint of trade illegal; exception of resale price agreements; penalty

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal ..."

"§2. Moncpolizing trade a misdemeanor; penalty

"Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

3. In 1974, an amended complaint was filed which added additional plaintiffs and defendants who had joined in the litigation after the original complaint had been filed, and some of the named plaintiffs, e.g., Oscar Robertson, have now retired as active NBA players.

4. Defendant NBA is a joint venture which operates one of the two major professional basketball leagues in the United States. The NBA member clubs which operate in different home cities under franchise from the NBA are generally owned by corporations; those owners and officers or representatives of the management of the club owners are also named as defendants. The Board of Governors of the NBA, a formal group of the club owners which creates policy for and controls the affairs of the NBA, is also a defendant. For convenience' sake, all these defendants will be collectively known as NBA defendants.

5. Since there will be no references throughout to the original complaint but only to the amended complaint, the amended complaint will hereinafter be referred to as complaint.

6. The complaint states that those few players who are not bound to sign the Uniform Contract, and hence are not bound by its terms, are nonetheless affected by the other anti-competitive practices imposed on all players by the defendants.

7. Prior to 1971, the contract could be unilaterally renewed with a 25% reduction in salary, but this provision was dropped by the NBA in 1971, and the renewal is at the same salary.

8. In 1967, the ABA was organized and began to compete with the NBA for both players and spectators.

9. See paragraph 31 of the complaint.

10. The complaint alleges the following:

"37. As a result of the aforesaid unlawful combination or conspiracy, plaintiff players have been injured in their business and property, in that they have lost substantial amounts of income which, but for the unlawful acts of defendants, they would have earned from playing professional basketball. Moreover, since plaintiff players are not free to exploit their reputations in locations of their choice, they have been restrained and injured in the pursuit of collateral activities, such as product endorsements and publicity appearances. The amounts of such damages are not presently ascertainable; when ascertained, plaintiffs will ask leave of the Court to amend the complaint by inserting said amounts herein.

"38. Plaintiff players have also been injured, apart from financial considerations, as a result of the aforesaid combination or conspiracy, in that they cannot play in the NBA in locations of their choice or for clubs which may offer more favorable opportunities or conditions of employment.

"39. The aforesaid combination or conspiracy is continuing, and is causing irreparable injury to plaintiff players. Since any damages recoverable hereunder will only partially compensate them for all their injuries, plaintiff players have no complete and adequate remedy at law and the violations alleged herein should therefore be enjoined."

11. "As a result of the competition fostered by the continued independent existence of the ABA, which has provided the potential escape route for NBA players, certain NBA clubs have begun to increase the compensation of certain of the NBA players and prospective players above the artificially suppressed compensation levels in existence prior to the advent of competition from the ABA. The mere threat of taking this escape route by some NBA players has led to instant increases in their compensation." Paragraph 44-45 of the complaint.

12. Plaintiffs claim that negotiations between the leagues have already resulted in financial injury to players.

13. New York General Business Law, §340:

"Contracts or agreements for monopoly or in restraint of trade illegal and void

"1. Every contract, agreement, arrangement or combination whereby

"A monopoly in the conduct of any business, trade or commerce or in the furnishing of any service in this state, is or may be established or maintained, or whereby

"Competition or the free exercise of any activity in the conduct of any business, trade or commerce or in the furnishing of any service in this state is or may be restrained or whereby

"For the purpose of establishing or maintaining any such monopoly or unlawfully interfering with the free exercise of any activity in the conduct of any business, trade or commerce or in the furnishing of any service in this state any business, trade or commerce or the furnishing of any service is or may be restrained, is hereby declared to be against public policy, illegal and void."

14. ABA originally filed a counterclaim against the plaintiffs, the Players Association, and Laurence Fleisher, counsel and collective bargaining agent for the Players Association. Following a hearing on September 3, 1974, ABA filed a new answer which deleted all claims against the plaintiffs, the Players Association and Fleisher.

15. NBA argues that if bargaining history were relevant, "determination of any factual disputes on that issue would have to be determined by the National Labor Relations Board in the first instance." NBA Memorandum at 30. ABA, on the other hand, states that even if the merger or non-competition agreement is "barred," plaintiffs still have a remedy outside the antitrust laws,

> "for a complete remedy is available to them in unfair labor proceedings, to wit: a charge that the leagues have refused to bargain in good faith in violation of Section 8(a)(5)." ABA Memorandum at 24-25.

16. "Moreover, even in the few instances when the antitrust action could be framed as a refusal to bargain charge, there is no guarantee of Board action." 381 U.S. at 687. Defendants' contention that plaintiffs can raise their complaints as an unfair labor practice charge (NBA Reply Memorandum at 18; ABA Memorandum at 24-25) is without merit.

17. "(a) PERSONS TO BE JOINED IF FEASIBLE. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of

his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action. Rule 19(a),F.R.Civ.P.

"(b) DETERMINATION BY COURT WHENEVER JOINDER NOT FEASIBLE. If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder." Rule 19(b),F.R.Civ.P.

18. While Rule 19(a) covers those persons who should be joined by court order, Rule 19(b) controls the determination of when a case should be dismissed due to the impossibility of joining a Rule 19(a) absentee. Even if my finding that the joinder of the Players Association is not desirable is in error, dismissal of the complaint will not result. There is no hint that the Association will not be amenable to joinder, or that such joinder would divest this court of jurisdiction. See Wright & Miller, Federal Practice and Procedure, Civil §1604, at 35-36, 43.

19. NBA defendants claim that the Association is "vitally interested" in this action. Assuming arguendo that that is true, and satisfies Rule 19(a)(2), NBA gives no reason why the continuation of this action in the Association's absence will impair the latter's interest or leave the defendants subject to multiple or inconsistent obligations.

20. NBA contends differently for purposes of its opposition to plaintiffs' class action determination. See NBA Class Action Memorandum at 12-21.

21. The reserve system in baseball included the reserve clause itself, the player draft, and the right to assign a player's contract to another club. 316 F. Supp. at 273-74.

22. There, Judge Waterman said:

"It appears to be without question that, today, professional baseball, with its complex web of franchises, farm teams and recruiters, and its multi-million dollar contracts with television and radio networks, is interstate commerce. Our difficulty lies in determining to what extent, if at all, the states are precluded from antitrust regulation of interstate commerce. See Note, The Commerce Clause and State Antitrust Regulation, 61 Colum.L. Rev. 1469 (1961). The Supreme Court has not, to our knowledge, expressed any opinion as to the outer limits of state antitrust policy, although it has clearly held that state antitrust policy is not ousted from the regulation of local matters which may also be affected by federal laws. [citations omitted] Therefore, we turn for guidance to cases involving other areas of state regulation.

. . .

"[W]here the nature of an enterprise is such that differing state regulation, although not conflicting, requires the enterprise to comply with the strictest standard of several states in order to continue an interstate business extending over many states, the extra-territorial effect which the application of a particular state law would exact constitutes, absent a strong state interest, an impermissible burden on interstate commerce. Southern Pacific Co. v. Arizona, 325 U.S. 761, 774-775, 65 S.Ct. 1515, 89 L.Ed. 1915 (1945).

"Professional baseball clubs, although existing as separate legal entities, are organized into so-called leagues for competitive play and are dependent on the league playing schedule to further the ends of their sports competition. Therefore, it is the league structure at which any state antitrust regulation must be aimed if organized professional baseball is not to be severely fragmented. On the one hand, it is apparent that each league extends over many states, and that, if state regulation were permissible, the internal structure of the leagues would require compliance with the strictest state antitrust standard. The consequent extra-territorial effect of necessary compliance would be considerably more far-reaching than that in Southern Pacific Co. v. Arizona, supra. On the other hand, we do not find that a state's interest in antitrust regulation, when compared with its interest in health and safety regulation, is of particular urgency. Hence, as the burden on interstate commerce outweighs the states' interests in regulating baseball's reserve system, the Commerce Clause precludes the application here of state antitrust law." 443 F. 2d at 267-68 [footnote omitted].

23. "§151. Findings and declaration of policy

"The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

"The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and

employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

"Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

"Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

"It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

24. The registry had been established unilaterally by the Association, and functioned as a means of allocating seamen among the shipowners. In effect, it served as a hiring hall. The precedential strength of the holding in Anderson which found the registry to be in violation of the antitrust laws, considering the subsequent cases which have generally upheld the use of the hiring hall, see Local 357, International Brotherhood of Teamsters v. NLRB, 365 U.S. 667 (1961); NLRB v. Tom Joyce Floors, Inc., 353 F. 2d 768 (9th Cir. 1965); NLRB v. Houston Chapter, Associated General Contractors of America, Inc., 349 F. 2d 449 (5th Cir. 1965), cert. denied, 382 U.S. 1026 (1966), has been substantially eroded. However, this development has not affected that part of Anderson's holding allowing suit by employees against employers for violations of the antitrust laws.

25. "One probable result of the agreements, because entered into by organizations that represent a very substantial segment of the industry, will be to 'freeze' the labor supply, which is the indispensable element of the door-to-door magazine-selling trade." Union Circulation Co. v. FTC , 241 F. 2d 652, 658 (2d Cir. 1957).

26. "The effect of such a unilateral agreement between employers, as alleged in the present complaint ... could also be to restrain mobility on the part of employees who would otherwise have the opportunity, in a competitive market for services, to transfer to higher paid opportunities offered by others." 321 F. Supp. at 606.

27. E.g., Ramsey v. United Mine Workers of America, 401 U.S. 302 (1971); United Mine Workers of America v. Pennington, 381 U.S. 657 (1965); Intercontinental Container Transport Corp. v. New York Shipping Association, 426 F. 2d 884 (2d Cir. 1970).

28. Radovich v. National Football League, 352 U.S. 445 (1957); Union Circulation Co. v. FTC, 241 F. 2d 652 (2d Cir. 1957); Denver Rockets v. All-Pro Management, Inc., 325 F. Supp. 1049 (C.D. Cal. 1971); Cordova v. Bache & Co., 321 F. Supp. 600 (S.D.N.Y. 1970).

29. The Clayton Act provides:

§6 "The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws."

§20 "No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

"And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any

person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any laws of the United States."

30. "[T]here is no record indication in anything that was said or done in its passage which indicates that those engaged in business could escape its or the Sherman Act's prohibitions by obtaining the help of labor unions ..." As to unions, "the Clayton Act pointed in an opposite direction." 325 U.S. at 803.

31. "So far as the union might have achieved this result acting alone, it would have been the natural consequence of labor union activities exempted by the Clayton Act from coverage of the Sherman Act. [citations omitted] But when the unions participated with a combination of business men who had complete power to eliminate all competition among themselves and to prevent all competition from others, a situation was created not included within the exemptions of the Clayton and Norris-LaGuardia Acts.

"It must be remembered that the exemptions granted the unions were special exemptions to a general legislative plan. The primary objective of all the Anti-Trust legislation has been to preserve business competition and to proscribe business monopoly. It would be a surprising thing if Congress, in order to prevent a misapplication of that legislation to labor unions, had bestowed upon such unions complete and unreviewable authority to aid business groups to frustrate its primary objective.
...

"Our holding means that the same labor union activities may or may not be in violation of the Sherman Act, dependent upon whether the union acts alone or in combination with business groups. This, it is argued, brings about a wholly undesirable result--one which leaves labor unions free to engage in conduct which restrains trade. But the desirability of such an exemption of labor unions is a question for the determination of Congress." Id. at 809-10 (emphasis added).

32. The argument was raised by defendants there, as here, that economic history since the enactment of the Clayton Act compels an interpretation of the exemption which is not one-sided. I adopt that court's response, which was that if the exemption is to be applicable to both employers and labor organizations, Congress must make this purpose clear through amendment of the Clayton Act. 321 F. Supp. at 507.

33. See Volkswagenwerk v. FMC, 390 U.S. 261, 287 n.5 (1968) (concurring opinion); NLRB v. Truck Drivers Local 449, 353 U.S. 87 (1957); Kennedy v. LIRR, 319 F. 2d 366, 371 n.4 (2d Cir.), cert. denied, 375 U.S. 830 (1963); Clune v. Publishers Association of New York City, 214 F. Supp. 520, 524 (S.D.N.Y.), aff'd, 314 F. 2d 343 (2d Cir. 1963).

34. 381 U.S. at 689. Justice White also declared that the fact that "[e]mployers and unions are required to bargain about wages, hours and working conditions ... weighs heavily in favor of antitrust exemption for agreements on these subjects." Ibid.

35. "This rule flows directly from the Hutcheson holding that a union acting as a union, in the interests of its members, and not acting to fix prices or allocate markets in aid of an employer conspiracy to accomplish these objects, with only indirect union benefits, is not subject to challenge under the antitrust laws. To hold that mandatory collective bargaining is completely protected would effectuate the congressional policies of encouraging free collective bargaining, subject only to specific restrictions contained in the labor laws, and of limiting judicial intervention in labor matters via the antitrust route--an intervention which necessarily under the Sherman Act places on judges and juries the determination of 'what public policy in regard to the industrial struggle demands.'" Ibid.

36. First, he reaffirmed the principle that the exemption arose for the benefit of labor, 381 U.S. at 700-11; nothing was said which indicated that employers could enjoy that exemption save derivatively through negotiations with unions over mandatory subjects of bargaining. Id. at 711-12. Second, Justice Goldberg limited those subjects as to which bargaining is compulsory to lawful ones; violations of the antitrust laws, see discussion, infra, would not come within the ambit of mandatory bargaining:

> "The direct and overriding interest of unions in such subjects as wages, hours, and other working conditions, which Congress has recognized in making them subjects of mandatory bargaining, is clearly lacking where the subject of the agreement is price-fixing and market allocation. Moreover, such activities are at the core of the type of anticompetitive commercial restraint at which the antitrust laws are directed." Id. at 732-33 (emphasis added).

37. The Court of Appeals and the District Court also decided that the orchestra leaders were not a "non-labor" group within the meaning of Allen Bradley and Pennington.

38. The court also cited Justice Goldberg's statement in Jewel Tea that mandatory subjects do not include price-fixing and market allocation agreements. Id. at 164.

39. Section 8(d) of the National Labor Relations Act, 29 U.S.C. §158(d) requires "the employer and the representative of the employees to ... confer in good faith with respect to wages, hours, and other terms and conditions of employment." Those items are mandatory subjects of bargaining; a party who refuses to negotiate regarding these matters commits an "unfair labor practice." See NLRB v. Wooster Division of Borg-Warner Corp., 356 U.S. 342, 349 (1958).

40. In an earlier opinion denying a preliminary injunction for the plaintiff, Judge Cooper also stated that the reserve clause was not part of the collective bargaining agreement. Flood v. Kuhn, 309 F. Supp. 793, 806 n.51 (S.D.N.Y. 1970).

41. Even if the challenged practices were determined to be mandatory subjects, a court might nonetheless hold that they are not exempt. See Pennington, supra n.27, at 664-65; Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, Inc., 351 F. Supp. 462, 498 (E.D. Pa. 1972).

42. NLRB v. Houston Chapter, Associated General Contractors of America, Inc., 349 F. 2d 449 (5th Cir. 1965), cert. denied, 382 U.S. 1026 (1966) (hiring hall); United States Pipe and Foundry Co. v. NLRB, 298 F. 2d 873 (5th Cir. 1962) (common expiration date for union contracts); Inland Steel Co. v. NLRB, 170 F. 2d 247 (7th Cir. 1948), cert. denied, 336 U.S. 960 (1949) (retirement and pension plans).

43. Dave Parks was an all-pro receiver for the San Francisco 49ers who played out his option and signed with the New Orleans Saints. Pete Rozelle ordered the Saints to surrender their 1968 and 1969 first round draft choices as compensation. One commentator has said of this ruling:

> "First-round draft choices are extremely valuable and this price exacted by the commissioner is an indication that signing a supposedly free agent who has played out his option may cost the [new] team more than the player is worth. Thus a player who has played out his option must now convince a new team that he is worth not only the salary he is seeking but also the loss of any player on the new team which the commissioner, in his total and unappealable discretion, considers to be adequate compensation to the old team."
> Playing the Game in a Bidding War, supra, at 389 [footnote omitted].

44. "The severe restrictions which this puts on a player's actual ability to play out his option is reflected in the fact that few players ever play out their options and, that, since the Dave Parks case, no player of all-league caliber has played out his option and gone to a new team." Ibid.

45. S. Rep. No. 92-1151, 92d Cong., 2d Sess. (1972).

46. "Sec. 4. (a) Every individual who is already engaged in the organized professional team sport of basketball in or affecting interstate commerce has the right to enter into a contract with any person for the purpose of engaging in such sport with a particular team without agreeing to permit that person to control his right, upon the expiration of his contract, to enter into a contract with any other person for such purpose, but this subsection shall not preclude agreement upon a contract containing an option provision as authorized by subsection (b).

"(b) No member club of any professional basketball league that has been allocated the right of first negotiation with a player who has not theretofore played professional league basketball may require such player to enter into a contract of employment for a term in excess of one year with an option provision for a further period of one year only. No member club of any professional basketball league shall retain directly or indirectly or by any means or device whatsoever, any option upon the services of any player beyond the termination date contained in his contract of employment, except for the option provision contained in the first contract of employment and except for an option provision which may not be part of a uniform player contract and which is individually negotiated at the discretion of the player after the effective date hereof for a period of no more than one year after the term contained in his contract of employment.

"(c) Any provision of a contract which requires any such an individual or player (1) to agree to permit the other party to the contract to control his right, upon the expiration of that contract, to enter into a contract with any other person for the purpose of engaging in an organized professional team sport of basketball, or (2) to secure a release from the other party to the contract before entering into or performing under such a contract with any other person for such purpose, shall be unenforceable.

"(d) Any person who deprives, or conspires with any other person to deprive, an individual or player of his rights under subsection (a) or (b) shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not more than $50,000, imprisoned for not more than one year, or both."

47. "[T]here are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the

business excuse for their use ... an inquiry so often wholly fruitless when undertaken." Northern Pac. Ry. v. United States, 356 U.S. 1, 5 (1958); see also Player Control Mechanisms in Professional Team Sports, 34 Un. Pitt. L. Rev. 645, 650-55 (1973).

48. The injunction was stayed pending appeal, but Justice Douglas vacated the Ninth Circuit's stay and reinstated the preliminary injunction. Haywood v. National Basketball Association, 401 U.S. 1204 (1971). In the course of his opinion Justice Douglas stated that the group boycott implication involved in the draft is a significant issue. Id. at 1205-1206.

49. The defendants argue that the hockey cases are irrelevant, as the system of restraint is far more pervasive than that present in basketball. See Boston Professional Hockey Association, Inc. v. Cheevers, 348 F. Supp. 261, 267 (D. Mass. 1972); Philadelphia Hockey, supra n.41. The NBA, unlike the NHL, has not had to develop and maintain farm teams, for the nation's colleges provide that as a free service; that may help account for the purported difference between the sports. Insofar as a difference may exist, I find it only one of degree and not of kind.

50. The court disagrees with the defendants' interpretation of the Second Circuit's statement in Carroll v. American Federation of Musicians of the United States and Canada, 372 F. 2d 155, 165 (2d Cir. 1967), that collective bargaining history is irrelevant. In Carroll, the regulations were unilaterally imposed by a union largely on persons who were members of the union. Moreover, the Court of Appeals three years later in Intercontinental Transport, supra n.27, explored bargaining history, and finally ascertained who sought and obtained the provision in question. In any case, I propose to follow the course set in Philadelphia Hockey, supra n. 41, and Boston Professional Hockey Association, supra n. 49, and explore the NBA-players bargaining history.

51. "[A]ll past, present and future NBA players have been and still are forced either to accept the intra-league anticompetitive and uniform conditions unilaterally imposed upon them by the NBA defendants or to risk forfeiting their right to earn their livelihood as professional basketball players. And, any full or partial combination or merger of the NBA and ABA or their member teams, will forever foreclose the inter-league competition that existed between 1967 and 1970." Plaintiffs' Class Action Memorandum at 6-7.

52. The ABA has not opposed the class action motion. It should also be noted that only injunctive relief is sought against the ABA. Complaint at 23-24.

53. In addition to the four prerequisites set out in Rule 23(a), it has been generally assumed that a definable class must exist, and that the purported representatives be members of that class. Wright & Miller, supra, Civil §1759, at 573, and §§1760, 1761.

54. "In no other business has this type of restriction been permitted to my knowledge. These restrictions imposed great hardships on all the NBA players--who, it should be noted, are professionals possessing great skills. Of the literally hundreds of thousands of varsity high school players in the United States and of the thousands of varsity college players, each year fewer than fifty are good enough to join the NBA ..." Fleisher Affidavit ¶9.

55. Plaintiffs' Class Action Reply Memorandum at 39.

56. "[T]he notice required by Rule 23(c)(2) is a factor which may properly be considered in weighing the feasibility of management of the proposed class action." Philadelphia Electric Co. v. Anaconda American Brass Co., 43 F.R.D. 452, 462 (E.D. Pa. 1968). In any case, plaintiffs have agreed to give notice to all members of the proposed class, including future members as they enter the NBA. Fleisher Reply Affidavit ¶20.

57. The plaintiffs admit, Plaintiffs' Class Action Memorandum at 15, that the amount of damages which may be awarded to each member may be different. That will not bar a 23(a)(3) or (4) determination. Leisner v. New York Telephone Co., 358 F. Supp. 359, 372 (S.D.N.Y. 1973); Minnesota v. United States Steel Corp., 44 F.R.D. 559, 567 (D. Minn. 1968).

58. Plaintiffs' Class Action Memorandum at 16-17.

59. "A decision sustaining the former players' position and awarding them treble damages may well bankrupt the NBA and most if not all of its members." Defendants' Memorandum in Opposition at 13.

60. Defendants also foresee possible conflicts in past players' lack of interest in preventing a merger between the ABA and NBA, and in the likelihood that the present players will abandon the suit if the reserve clause is eliminated or modified by agreement.

61. See Affidavits of McLemore, Debusschere, Loughery, Caldwell, Crawford, Egan, Wilkens, Attles and Scott.

62. If they are injured or released they still get paid.

63. See Affidavit of Meminger.

64. Defendants' Memorandum in Opposition at 20.

65. See Affidavits of Debusschere, Attles, Wilkens, Loughery, Egan, and Scott.

66. Hearings on S.2373 before the Subcomm. on Antitrust and Monopoly of the Senate Comm. of the Judiciary, 92d Cong., 1st Sess., pt. 1, at 311-13 (1971).

67. See Plaintiffs' Class Action Reply Memorandum at 19.

68. "If later events demonstrate that the representatives are not adequately protecting the absentees, the court may take whatever steps it thinks necessary under Rule 23(c) or Rule 23(d) at that time." Wright & Miller, supra, Civil §1765, at 625-26; see also Feder v. Harrington, 52 F.R.D. 178 (S.D.N.Y. 1970); Fischer v. Kletz, 41 F.R.D. 377 (S.D.N.Y. 1966); Sol S. Turnoff Drug Distributors Inc. v. N.V. Nederlandsche Combinatie Voor Chemische Industrie, 51 F.R.D. 227, 233 (E.D. Pa. 1970).

69. "The general standard appears to be that the representatives must be of such a character as to assure the vigorous prosecution or defense of the action so that the members' rights are certain to be protected. ...

"Counsel is said to be qualified ... if he is experienced in the particular type of litigation before the court ... [and his] competence ... may be demonstrated by the quality of the briefs and the arguments presented ... " Wright & Miller, supra, Civil §1766, at 633-34 (footnotes omitted). I have no trouble in holding that the named plaintiffs and their counsel have met these standards.

70. See, e.g., Eisen v. Carlisle & Jacquelin, 391 F. 2d 555, 564 (2d Cir. 1968); Free World Foreign Cars, Inc. v. Alfa Romeo, 55 F.R.D. 26, 29 n.9 (S.D.N.Y. 1972); Graybeal v. American Savings & Loan Association, 59 F.R.D. 7 (D.D.C. 1973); Goldman v. First National Bank, 56 F.R.D 587, 592-93 (N.D. Ill. 1972); Baham v. Southern Bell Telephone & Telegraph Co., 55 F.R.D. 478, 480-81 (W.D. La. 1972); Alsup v. Montgomery Ward & Co., 57 F.R.D. 89 (N.D. Cal. 1972); Bogosian v. Gulf Oil Corp., 62 F.R.D. 124, 133 (E.D. Pa. 1973).

71. Advisory Committee's Note to Rule 23, 39 F.R.D. 98, 102 (1966).

72. See, e.g., Robinson v. Lorillard Corp., 444 F. 2d 791, 801-802 (4th Cir.), cert. dismissed, 404 U.S. 1006 (1971); Rodriguez v. Swank, 318 F. Supp. 289, 295 (N.D. Ill. 1970), aff'd, 403 U.S. 901 (1971); Samuel v. University of Pittsburg, 56 F.R.D. 435, 440 (W.D. Pa. 1972); Leisner v. New York Telephone Co., supra n.57, at 358.

73. "The prosecution of separate actions by individual members of the class could lead to inconsistent results with respect to other members of the class ... since the finance charge exacted by defendant is either legal or it is illegal as to all members. For the same reason, an adjudication with respect to plaintiff would be, as a practical matter, dispositive of the interests of the other class members ... " Id. at 534.

74. Contra, Ratner v. Chemical Bank New York Trust Co., 54 F.R.D. 412, 415 (S.D.N.Y. 1972); Goldman v. First National Bank, 56 F.R.D. 587 (N.D. Ill. 1972).

75. Advisory Committee's Note to Rule 23, 39 F.R.D. 98, 101 (1966).

76. Cf. "It would be incongruous and damaging for all parties were the reserve clause and common draft, for example, to be held illegal by one or more courts as to some of the players, but legal by other courts as to other players, or that with respect to some of the players the NBA and ABA could not merge; but as to other players they could merge." Plaintiffs' Class Action Memorandum at 21.

77. See, e.g., Illinois v. Harper & Row Publishers, Inc., 301 F. Supp. 484 (N.D. Ill. 1969); City of Philadelphia v. American Oil Co., 53 F.R.D. 45 (D. N.J. 1971); Siegel v. Chicken Delight, Inc., 271 F. Supp. 722 (N.D. Cal. 1967); Gold Strike Stamp Co. v. Christensen, 436 F. 2d 791 (10th Cir. 1970); Matarazzo v. Friendly Ice Cream Corp., 62 F.R.D. 65 (E.D.N.Y. 1974); City of Philadelphia v. Emhart Corp., 50 F.R.D. 232 (E.D. Pa. 1970); Philadelphia Electric Co. v. Anaconda American Brass Co., 43 F.R.D. 452 (E.D. Pa. 1968); City of New York v. General Motors Corp., 60 F.R.D. 393 (S.D.N.Y. 1973), rev'd on other grounds, 501 F. 2d 639 (2d Cir. 1974); In re Antibiotic Antitrust Actions, 333 F. S . 278 (S.D.N.Y. 1971).

78. Hearings on S.2373 Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary, 92d Cong., 1st Sess., pt. 1, at 302-303, 317-18 (1971).

79. Denver Rockets v. All-Pro Management, Inc., 325 F. Supp. 1049 (C.D. Cal. 1971).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al., Plaintiffs, -against- NATIONAL BASKETBALL ASSOCIATION, et al., Defendants.	70 Civ. 1526 (RLC)
AMERICAN BASKETBALL ASSOCIATION, et al., Cross-claimants, -against- NATIONAL BASKETBALL ASSOCIATION, et al., Cross-defendants.	PLAINTIFFS' FIRST REQUEST FOR THE PRODUCTION OF DOCUMENTS

Plaintiffs hereby request, pursuant to Rule 34 of the Federal Rules of Civil Procedure, that defendants National Basketball Association ("NBA") and each NBA member team identified in the amended and supplemental complaint filed herein, produce and permit plaintiffs or someone acting on their behalf to inspect and copy the documents described below which are in the possession, custody or control of those defendants or their agents, attorneys or employees or persons acting on their behalf, wherever the same may be located on the date of this Request.

I. DEFINITIONS

A. "You" or "your" means the NBA, its member teams, jointly and severally, including all owners, shareholders, principals, officers, directors, agents, employees, attorneys, coaches, other representatives, subsidiaries, parents, affiliates, merged or acquired predecessors, corporations, companies, partnerships and other legal entities, jointly and severally.

B. As used herein, the term "document" includes, but is not limited to, any printed, written, recorded, taped, electronic, graphic, computerized print-out or other tangible matter from whatever source, however produced or reproduced, whether in draft or otherwise, whether sent or received or neither, including the original and any non-identical copy (whether different from the original because of notes made on or attached to such copy or otherwise) of any and all writings, correspondence, letters, telegrams, telex communications, cables, advices, orders, opinions, confirmations, notes, notations, papers, memoranda, inter-office communications, agreements, licenses, contracts, options, amendments and addenda to such contracts and options, books, pamphlets, studies, filings, minutes of meetings, recordings or other memorials of any type of personal or telephone conversations, meetings or conferences (including, but not limited to, telephone bills and long distance charge slips), reports, analyses, evaluations, estimates, projects, forecasts, receipts, statements,

accounts, books of account, diaries, calendars, desk pads, appointment books, stenographer's note books, transcripts, ledgers, registers, work sheets, journals, statistical records, cost sheets, summaries, lists, tabulations, digests, cancelled or uncancelled checks or drafts, vouchers, charge slips, invoices, purchase orders, hotel charges, account reports, financial statements, newspapers, periodical or magazine materials, and other records and documentary materials of any nature in defendants' actual or constructive possession custody, care or control.

C. As used herein, the term "player" means any individual who is presently playing or has either previously played professional basketball in the NBA in the regular season or play-off game or who is under contract to play in the future.

D. As used herein, the terms "reserve clause" or "option clause" mean the provision contained in ¶22 of the NBA's Uniform Player Contract (or any predecessor thereof) relating to a NBA member team's right of player contract renewal.

E. As used herein, the term "reserve compensation plan" means certain compensation requirements by one NBA member team to another NBA member team or entity as described in ¶¶16-17 of the affidavit of Walter J. Kennedy, sworn to July 25, 1974 and submitted in support of defendant's motion for summary judgment against the amended and supplemental complaint, or otherwise described or existing on any other basis.

F. As used herein, the term "college player draft" means the system or procedure whereby a defendant NBA member team is granted the exclusive right to choose specific college players with whom it wishes to negotiate, as more fully described in the amended and supplemental complaint herein, and the "college draft list" as described in Article 1.13 of the By-Laws of the NBA.

G. As used herein, the term "free agent" means a NBA player who is no longer under contract to any NBA team and has finished playing through the so-called "reserve" or "option" year as more fully described in ¶22 of the NBA's Uniform Player Contract.

H. As used herein, the term "trade" or "traded" means the selling, exchanging, assigning and/or transferring of a player's employment contract from one NBA team to another NBA team, with or without consideration, pursuant to ¶12 of the NBA Uniform Player Contract or otherwise.

I. As used herein, the term "player compensation" means all remuneration received, or contracted to be received, by a player pursuant to his contract with a NBA team, whether in the form of salary, bonus, deferred compensation, or otherwise.

II. INSTRUCTIONS

A. In producing these documents, you are requested to furnish all documents known or available to you regardless of whether these documents are possessed directly by you, or by your agents, employees, representatives, or investigators, or by your attorneys or their agents,

employees, representatives or investigators.

B. If any of these documents cannot be produced in full, produce to the extent possible, specifying your reasons for your inability to produce the remainder and stating whatever information, knowledge, or belief you do have concerning the unproduced portion.

C. This Request is a continuing one. If, after producing the requested documents, you obtain or become aware of any further documents responsive to this Request you are required to produce to plaintiffs such additional documents.

D. Unless otherwise stated, the documents called for herein shall be preduced for the period January 1, 1966 to the date of the filing of this Request.

E. With respect to those documents or records as to which you may claim privilege, attorneys' work product or trial preparation, your counsel is requested to identify in writing on or before the date of production specified below the nature, date and author of any such document or record as well as the names of all persons to or by whom such document or record was directed, addressed or received. Your counsel is further required to set forth as to each such document the basis for such claim and whether you will submit such document to the Court for an in camera determination as to the validity of the claim.

F. The time, place and manner of making the production of documents are specified to be the offices of Weil, Gotshal & Manges, 767 Fifth Avenue, New York, New York,

commencing on March 31, 1975 at 10:00 a.m. by permitting plaintiffs or someone acting on their behalf to examine originals or exact duplicate photographic copies of originals of the documents described below and to designate and reproduce for plaintiffs such number of copies of such documents as plaintiffs shall determine, at the expense of plaintiffs and by the use of such reproduction facilities as shall be available at the offices of Weil, Gotshal & Manges, or such other reproduction facilities as plaintiffs may, from time to time, determine.

III. DESCRIPTION OF DOCUMENTS

This Request is directed at you and requires the production of each and every document, whether or not yours, which in any way records, relates, reflects or refers to any of the following matters:

1. All NBA player employment contracts with NBA member teams (whether in the form of the NBA Uniform Player Contract or otherwise), and all dealings, discussions, meetings, communications, negotiations or arrangements referring or relating thereto.

2. All documents since the inception of the NBA which refer or relate to a NBA player's compensation as defined herein, and all dealings, discussions, meetings, communications, negotiations or arrangements referring or relating thereto.

3. All other agreements, understandings and/or letters of intent between or among any NBA player and a

NBA team, and all dealings, discussions, meetings, communications, negotiations or arrangements referring or relating thereto.

4. All documents from the inception of the NBA which directly or indirectly set forth the rules, regulations and practices by which the NBA and its member teams operate and play basketball.

5. All documents from the inception of the NBA which refer or relate to the adoption by the NBA and its member teams of a Uniform Player Contract or any other form of standardized employment contract, and all discussions, meetings or communications referring or relating thereto.

6. All documents from the inception of the NBA which refer or relate to the creation and to each change in the NBA reserve or option clause, and all dealings, discussions, meetings, communications, negotiations or arrangements referring or relating thereto.

7. All documents which refer or relate to a perpetual right of renewal or option in favor of NBA teams, or a right of renewal or option in excess of one year.

8. All documents which refer or relate to the exercise by a NBA team of its renewal rights with regard to any NBA player pursuant to ¶22 of the NBA Uniform Player Contract (or any predecessor thereto) and all dealings, discussions, meetings, communications, negotiations or arrangements referring or relating thereto.

9. All documents which refer or relate to a

as defined herein (whether by playing through his reserve or option year or otherwise), and all discussions, meetings or communications referring or relating thereto.

10. All documents, agreements and/or understandings from the inception of the NBA which refer or relate to the creation, imposition and/or maintenance of the reserve compensation plan by the NBA and its member teams, and all dealings, discussions, meetings, communications, negotiations or arrangements referring or relating thereto.

11. All documents which refer or relate to the invocation of the reserve compensation plan by a NBA member team with regard to any NBA player, and all discussions, meetings or communications referring or relating thereto.

12. All documents which refer or relate to the creation, imposition, maintenance and/or application of a form of reserve compensation plan set forth in a letter from Edward S. Irish to Lawrence Fleisher dated September 2, 1971, and all discussions, meetings or communications referring or relating thereto.

13. All documents, agreements and/or understandings from the inception of the NBA which refer or relate to the imposition of and/or changes in the NBA's college player draft, and all dealings, discussions, meetings, communications, negotiations or arrangements referring or relating thereto.

14. All documents which refer or relate to the trading of NBA players as defined herein, and all dealings, discussions, meetings, communications, negotiations or arrangements referring or relating thereto.

15. All documents, agreements and/or understandings which refer or relate to a possible merger or combination between or among the NBA and its member teams and the American Basketball Association ("ABA") and its member teams, and all dealings, discussions, meetings, communications, negotiations or arrangements referring or relating thereto.

16. All documents which refer or relate to any non-competition agreement or understanding between or among the NBA and its member teams and the ABA and its member teams, and all dealings, discussions, meetings, communications, negotiations or agreements referring or relating thereto.

17. All documents which refer or relate to any other agreements, contracts, understandings, discussions, meetings or communications of any kind between or among the NBA and its member teams and the ABA and its member teams.

18. All documents from the inception of the NBA which relate or refer to collective bargaining between the NBA, its member teams and/or their representatives and the NBA players and/or their representatives, and all dealings, discussions, meetings, communications, negotiations or arrangements referring or relating thereto.

19. All documents and communications between or among the National Basketball Players Association and/or Lawrence Fleisher and the NBA and/or its member teams, and all dealings, discussions, meetings, negotiations and arrangements referring or relating thereto.

20. All documents which refer or relate to the lawsuits, arbitrations and/or other adversary proceedings referred to in Interrogatory No. 66 of plaintiffs' First Set of Interrogatories.

21. All documents which refer or relate to (or which were prepared in connection with) appearances before any federal or state administrative or congressional body by the NBA, its member teams and/or their representatives referred to in Interrogatory No. 67 of plaintiffs' First Set of Interrogatories, and all discussions, meetings and communications referring or relating thereto.

22. All documents which reflect the last known mailing address of each player who played since October 1, 1969

23. All documents since the inception of the NBA which refer or relate to all the Player Lists as defined in Article 1.15 of the NBA By-Laws, including copies of all such lists.

24. All documents and communications from the inception of the NBA of, from, between or among the following: the NBA, any of its member teams, the NBA, any of its member teams, which refer, relate or reflect in any way the restraints alleged in the amended-supplemental complaint herein and each of your contentions with respect thereto.

25. All documents identified in your Answers

to plaintiffs' First Set of Interrogatories.

Dated: New York, New York
March 14, 1975

WEIL, GOTSHAL & MANGES

By _____
(A Member of the Firm)
Attorneys for Plaintiffs
767 Fifth Avenue
New York, New York 10022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON. et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

70 Civ. 1526 (RLC)

AMERICAN BASKETBALL ASSOCIATION, et al.

Cross-claimants,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Cross-defendants.

FIRST DOCUMENT REQUEST TO (i) THE NAMED PLAINTIFFS INDIVIDUALLY AND AS OFFICERS OF OR REPRESENTATIVES TO THE NATIONAL BASKETBALL PLAYERS ASSOCIATION AND (ii) THE NATIONAL BASKETBALL PLAYERS ASSOCIATION FROM DEFENDANTS NATIONAL BASKETBALL ASSOCIATION AND ITS MEMBER TEAMS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, defendants National Basketball Association and its member teams request of (i) the named plaintiffs individually and as officers of or representatives to the National Basketball Players Association and (ii) the National Basketball Players Association the production for inspection and copying of documents (as hereinafer defined) designated herein. Pursuant to prior agreement of counsel inspection shall take place on April 7, 1975. Inspection shall take place commencing at 10:00 A.M. at the offices of Proskauer Rose Goetz & Mendelsohn, 300 Park Avenue, New York, New York,

or at such other time and place agreed to by counsel.

I. DEFINITIONS

1. "NBA" means the National Basketball Association.

2. "Players Association" means the National Basketball Players Association including, without limitation, each NBA team's representative to the National Basketball Players Association.

3. "ABA" means the American Basketball Association.

4. "Document" means any document in the custody, possession or control of either the named plaintiffs or the Players Association, including, but not limited to, books, records, financial statements, bills, invoices, letters, telegrams, notes, memoranda, calculations, diaries, work sheets and drafts, originals and copies, and other tangible things, whether typed, handwritten or on tape or other recording, from whatever source and any material underlying, supporting or used in the preparation of any documents.

5. "Person" means any individual, partnership, corporation or other business establishment.

II. INSTRUCTIONS

1. In producing these documents, the named plaintiffs individually and as officers of and representatives to the Players Association and the Players Association are requested to furnish all documents known or available to them regardless of whether the documents are possessed directly by them; their agents, employees, representatives, or investigators; or by their attorneys, or said attorney's

agents, employees, representatives or investigators; or by the representatives or former representatives to the Players Association from each NBA team.

2. If any of the documents cannot be produced in full, produce to the extent possible, specifying the reasons for the inability to produce the remainder.

3. This document request is a continuing one. If, after producing documents, the named plaintiffs or the Players Association obtain or become aware of any further documents responsive to this request, they are required to produce such additional documents.

4. The production of the documents called for herein covers the period January 1, 1965 to the date of the entry of a final judgment in this action.

5. If any document is claimed to be immune from discovery on the ground of privilege, the author, date, recipient and general subject matter of the document should be specified, together with the basis on which the privilege is asserted.

III. DESCRIPTION OF DOCUMENTS

The named plaintiffs individually and as officers and representatives of the Players Association and the Players Association are requested to produce the following documents:

1. All documents relating in any way to the formation or the Players Association, including, without limitation:

a. Communications by players in the NBA among themselves or anyone else, including Lawrence Fleischer, concerning the formation of the Players Association; and

b. Documents relating to the purposes and functions of the Players Association.

2. The constitution, by laws and all other internal governing documents of the Players Association for each of the years 1965 to date.

3. All documents filed by the Players Association with, or received by the Players Association from, any federal or state governmental agency, including, without limitation, documents filed with or received from the National Labor Relations Board, including, without limitation:

a. Petitions for recognition as a union;

b. Documents relating to the scope or definition of the bargaining unit;

c. Petitions requesting an election for union recognition;

d. Annual reports of the Players Association; and

e. Charges with respect to alleged violations of the National Labor Relations Act by the NBA, its member teams, or any officers, agents or employees thereof.

4. All documents sent by the Players Association to, or received by the Players Association from, any of its members, or former or then present players in the NBA, commenting on, soliciting an opinion of, or relating in any way to, (i) the NBA college draft, (ii) the option clause in the NBA Uniform Players Contract, (iii) what occurs when the option clause in a player's contract expires, and/or (iv) the right NBA team to assign a player's contract to another team.

5. All documents in the possession, custody or control of the Players Association that it sent to, or received from, any team in the NBA, or the NBA itself, commenting on, or relating in any way to, (i) the NBA college draft, (ii) the option clause in the NBA Uniform Players Contract, (iii) what occurs when the option clause in a player's contract expires, and/or (iv) the right of an NBA team to assign a player's contract to another team.

6. All documents in the possession, custody or control of the Players Association that it sent to or received from a basketball player not then playing in the NBA, which comment in any way upon (i) the NBA college draft, (ii) the option clause in the NBA Uniform Players Contract, (iii) what occurs when the option clause in a player's contract expires, and/or (iv) the right of an NBA team to assign a player's contract to another team.

7. All documents, other than those referred to in Items 4, 5 and 6, in the possession, custody or control of the Players Association, commenting on or relating in any way to, (i) the NBA college draft, (ii) the option clause in the NBA Uniform Players Contract, (iii) what occurs when the option clause in a player's contract expires, and/or (iv) the right of an NBA team to assign a player's contract to another team.

8. All documents sent by the Players Association to any of its members, or former or then present players in the NBA, or received by the Players Association from any of its members or former or then present players in the NBA, concerning in any way collective bargaining negotiations with the NBA, including, without limitation:

a. Questionnaires or surveys of members of the Association with respect to items to be raised in collective bargaining discussions;

b. Responses to such questionnaires or surveys;

c. Reports on progress of collective bargaining negotiations; and

d. Proposed alternatives to seek, or compromises to agree to, in collective bargaining negotiations.

9. Documents sent by the Players Association to the NBA or any of its teams, or any officers, employees or agents thereof, and documents received from said parties by the Players Association, concerning in any way collective bargaining negotiations.

10. All internal memoranda or related documents of any kind prepared by the Players Association, or any officer or agent thereof, including the representatives of each team to the Players Association, concerning in any way (i) collective bargaining negotiations with the NBA, (ii) the NBA college draft, (iii) the option clause in the NBA Uniform Players Contract, (iv) what occurs when the option clause in a player's contract expires, and/or (v) the right of an NBA team to assign a player's contract to another team.

11. All documents sent by, received by, or in the possession, custody or control of, the Players Association concerning in any way the meaning, interpretation or existence of (i) any provision of the collective bargaining agreement between the NBA and the Players Association or (ii) the NBA Uniform Players Contract.

12. All documents sent by the Players Association to its members, or received by the Players Association from

its members, relating in any way to the institution, prosecution, continued maintenance or possible settlement of this action.

13. All documents in the possession, custody or control of the Players Association that it sent to or received from (i) the ABA, (ii) any of the member teams of the ABA, (iii) the American Basketball Players Association, or (iv) any player then playing in the ABA.

14. All documents in the possession, custody or control of the Players Association that it sent to or received from (i) any of its members, (ii) any former or then present NBA player, (iii) the NBA, or (iv) any NBA team.

15. All financial statements and all other documents of any kind showing the assets, liabilities, income and expenses of the Players Association from 1965 to date.

Dated: New York, New York
March , 1975

PROSKAUER ROSE GOETZ & MENDELSOHN

By_____
Attorneys for Defendants
National Basketball Association
and its member teams
300 Park Avenue
New York, New York 10022

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To:

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON. et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

AMERICAN BASKETBALL ASSOCIATION, et al.

Cross-claimants,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Cross-defendants.

FIRST DOCUMENT REQUEST TO THE NAMED PLAINTIFFS AND EACH MEMBER OF THE CLASS FROM DEFENDANTS NATIONAL BASKETBALL ASSOCIATION AND ITS MEMBER TEAMS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, defendants National Basketball Association and its member teams request of the named plaintiffs and each member of the class the production for inspection and copying of documents (as hereinafter defined) designated herein. Pursuant to prior agreement of counsel inspection shall take place on April 7, 1975 (April 17, 1975 with respect to production of documents by members of the class who are not named plaintiffs). Inspection shall take place at a time and place agreed to by counsel.

I. DEFINITIONS

1. "NBA" means the National Basketball Association.

2. "Players Association" means the National Basketball Players Association, including, without limitation, each NBA team's representative to the National Basketball Players Association.

3. "ABA" means the American Basketball Association.

4. "Professional basketball team" means any team which pays money or compensation of any kind to a basketball player playing for it.

5. "Document" means any document in the custody, possession or control of either the named plaintiffs or any member of the class. including, but not limited to, any printed, written, recorded, taped, electronic, graphic, computerized print-out or other tangible matter from whatever source, however produced or reproduced, whether in draft or otherwise, whether sent or received or neither, including the original and any non-identical copy (whether different from the original because of notes made on or attached to such copy or otherwise) of any and all writings, correspondence, letters, telegrams, telex communications, cables, advices, orders, opinions, confirmations, notes, notations, papers, memoranda, interoffice communications, agreements, licenses, contracts, options, amendments and addenda to such contracts and options, books, pamphlets, studies, filings, minutes of meetings, recordings or other memorials of any type of personal or telephone conversations, meetings or conferences (including, but not limited to, telephone bills

and long distance charge slips), reports, analyses, evaluations, estimates, projects, forecasts, receipts, statements, accounts, books of account, diaries, calendars, desk pads, appointment books, stenographer's note books, transcripts, ledgers, registers, work sheets, journals, statistical records, cost sheets, summaries, lists, tabulations, digests, cancelled or uncancelled checks or drafts, vouchers, charge slips, invoices, purchase orders, hotel charges, account reports, financial statements, newspapers, periodical or magazine materials, any other records and documentary materials of any nature, and any material underlying, supporting or used in the preparation of any documents.

6. "Person" means any individual, partnership, corporation or other business establishment.

II. INSTRUCTIONS

1. In producing these documents, each named plaintiff and each member of the class is requested to furnish all documents known or available to him regardless of whether the documents are possessed directly by him, his agents, employees, representatives, or investigators, or by his attorneys or said attorney's agents, employees, representatives or investigators.

2. If any of the documents cannot be produced in full, produce to the extent possible, specifying the reasons for the inability to produce the remainder.

3. This document request is a continuing one. If, after producing documents, any of the named plaintiffs or any member of the class obtains or becomes aware of any further documents responsive to this request, they are required to produce such additional documents.

4. Unless otherwise specified the production of the documents called for herein covers the period January 1, 1965 to the date of the entry of a final judgment in this action.

5. If any document is claimed to be immune from discovery on the ground of privilege, the author, date, recipient and general subject matter of the document should be specified, together with the basis on which the privilege is asserted.

III. DESCRIPTION OF DOCUMENTS

Each named plaintiff and each member of the class is requested to produce the following documents:

1. All documents sent to, received from, or relating in any way to, the Players Association, an NBA team's representative to the Players Association or Lawrence Fleisher.

2. All documents in your possession, custody or control, whether written by you or someone else and whether or not sent to or received from the Players Association, expressing an opinion about, or relating to:

a. the college draft used by either the NBA or ABA;

b. the option clause in the Uniform Players Contract of the NBA or ABA;

c. the rights of player and team upon expiration of the option clause in a player's contract; and

d. the right of an NBA or ABA team to assign a player's contract to another team.

3. All documents in your possession, custody or control concerning in any way collective bargaining

negotiations with either the NBA or ABA including, without limitation, documents relating to:

a. surveys of player preferences with respect to items to be raised or discussed in negotiations;

b. the players' response to such surveys; and

c. progress reports of collective bargaining negotiations between either the NBA and the Players Association or the ABA and the American Basketball Players Association.

4. All contracts, and drafts thereof, between you and any professional basketball team, basketball league or other person with respect to your services as a professional basketball player.

5. All documents in your possession, custody or control that you sent to or received from any professional basketball team or league relating in any way to:

a. Proposals that you enter into a contract to play for said team or league;

b. Items that might be included in any contract that you might enter into to play professional basketball;and

c. A renewal or renegotiation of any contract to play professional basketball you may have previously entered into.

6. All other contracts, and drafts thereof, other than those specified in Item 4 above, which you ever entered into, from the date you first commenced playing professional basketball to the present, pursuant to which you received compensation of any kind.

7. All contracts, and drafts thereof, you entered into with any attorneys, agents, or other representatives pursuant to which said person was to represent you in:

a. negotiations with a professional basketball team;

b. negotiations to enter into the other types of contracts refered to in Item 6.

8. All documents you sent to or received from any representative referred to in Item 7.

9. All documents referring to you in any way in the possession, custody or control of any representative referred to in Item 7, whether or not sent by you, the representative, or anyone else.

10. Your income tax returns for each year from 1966 or the first calendar year in which you played professional basketball, whichever is later, to date.

11. All documents in your possession, custody or control concerning in any way the meaning, interpretation or existence of (i) any provision of the collective bargaining agreement between the NBA and the Players Association, (ii) the NBA Uniform Players Contract, (iii) any provision of the collective bargaining agreement between the ABA and the American Basketball Players Association, and (iv) the ABA Uniform Players Contract.

12. All documents in your possession, custody and control relating in any way to the institution, prosecution or maintenance of this action.

13. All documents identified in your answers to the NBA defendants' First Set of Interrogatories.

Dated: New York, New York
March 18, 1975

PROSKAUER ROSE GOETZ & MENDELSOHN

By s/ David Stern
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

70 Civ. 1526 (RLC)

AMERICAN BASKETBALL ASSOCIATION, et al.,

Cross-claimants,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Cross-defendants.

PLAINTIFF CHESTER WALKER'S ANSWERS TO THE NBA DEFENDANTS' FIRST SET OF INTERROGATORIES TO THE NAMED PLAINTIFFS AND EACH CLASS MEMBER

Plaintiff Chester Walker hereby answers this first set of "class interrogatories", subject to the Responses and Objections, dated April 7, 1975, filed by plaintiffs in respect to such interrogatories.* Definitions used herein correspond to the definitions consistently used by plaintiffs in their First Set of Interrogatories and their Responses and Objections to the NBA Interrogatories.

Interrogatory #1.

State your (i) name, (ii) present address, (iii) present employer, and (iv) present job occupation.

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* These answers are made upon information and belief and to the best of each plaintiff player's knowledge without reference or access to the documents contained in the files of the NBA (and in some cases ABA) defendants which documents contain the bulk of the requested information.

Answer:

(i) Chester Walker.

(ii) 88 West Schiller Street.

(iii) Chicago, Illinois 60610.

(iv) Professional basketball player.

Interrogatory #2.

Where and when were you born?

Answer:

Marshall County, Mississippi, February 22, 1940.

Interrogatory #3.

What was the name and address of the high school from which you graduated?

Answer:

Benton Harbor High School, Benton Harbor, Michigan.

Interrogatory #4.

List the name and address of each college and junior college you attended indicating the number of semesters you attended each such college or junior college and the degree, if any, you received from each such college or junior college.

Answer:

Bradley University, Peoria, Illinois, 8 semesters, Bachelor of Science in Education.

Interrogatory #5.

Was your name ever selected in a player draft conducted at any time by any professional athletic league? If so, state, for each such draft:

(a) The name of the league conducting the draft;

(b) The date of such draft;

(c) The name of the team that selected your name;

(d) The round in which your name was chosen;

(e) All documents in your possession, custody or control relating to each such draft.

Answer:

Yes.

(a) National Basketball Association.

(b) Spring 1962.

(c) Syracuse Nationals.

(d) Second round.

(e) All relevant documents will be produced.

Interrogatory #6.

List the City and State you considered to be your permanent resident for each year from the date you graduated from high school to date.

Answer:

Objected to.

Interrogatory #7.

List each team for which you ever played professional basketball and, for each such team, state:

(a) The league in which each such team played;

(b) [If the team was not in the NBA] The principal city or cities in which that team was located;

(c) [If the team was not in the NBA] The official name of the team;

(d) [If the team was not in the NBA] The team's last known business address;

(e) The period of time during which you played for each such team;

(f) The date of each contract entered into between you and each such team;

(g) The period of time covered by each such contract;

(h) The name of the person or persons who negotiated each contract on your behalf and on behalf of each such team with respect to each contract listed;

(i) The compensation called for by each such contract;

(j). The fringe benefits called for by each such contract;

(k) Any compensation you received in respect of your playing for such team, which compensation was not specifically set out in the contract.

Answer:

Syracuse Nationals, Philadelphia 76ers, Chicago Bulls.

(a) National Basketball Association.

(b) Not applicable.

(c) Not applicable.

(d) Not applicable.

(e) Syracuse/Philadelphia, 1962-69; Chicago, 1969-74.

(f) Syracuse, 1962; Philadelphia, 1963; Philadelphia, 1964; Philadelphia, 1965; Philadelphia, 1966; Philadelphia, 1967; Philadelphia, 1968; Chicago, 1969; Chicago, 1970; Chicago, 1973.

(g) Syracuse, 1962-63; Philadelphia, 1963-64; Philadelphia, 1964-65; Philadelphia, 1965-66; Philadelphia, 1966-67; Philadelphia, 1967-68; Philadelphia, 1968-69; Chicago, 1969-72; Chicago, 1972-74; Chicago, 1974-75.

(h) Chester Walker negotiated with Syracuse Nationals with Dan Biasone.

Chester Walker negotiated with Philadelphia 76ers with Ike Richmond every year except 1968 when he negotiated with Jack Ramsey.

Chester Walker and Shelley Bondit negotiated with the Chicago Bulls with Pat Williams in 1969.

Chester Walker and Ed Keating negotiated with the Chicago Bulls with Pat Williams in 1970.

Chester Walker and Ed Keating negotiated with the Chicago Bulls with Arthur Wirtz in 1972 and 1974.

(i) Syracuse, 1962 - $12,000
Philadelphia, 1963-69 -
Chicago, 1969-70 - $55,000
Chicago, 1970-71 - $65,000
Chicago, 1971-72 - $75,000
Chicago, 1972-73 - $90,000
Chicago, 1973-74 - $125,000
Chicago, 1974-75 - $180,000

(j) None.

(k) Playoff monies (undetermined amount).

Interrogatory #9.

List every professional athletic team with which you have negotiated with respect to your services, setting forth, for each team with whom you conducted negotiations:

(a) The name of the team and, if the team was not in the NBA, (i) the principal city in which the team was located, (ii) the official name of the team; and (iii) the team's last known business address;

(b) The dates of the negotiations;

(c) Who on your behalf and who on behalf of the team conducted the negotiations;

(d) The substance of the negotiations, including offers and demands on compensation;

(e) All subjects that were raised during each such discussion, including, without limitation, (i) compensation, (ii) fringe benefits, (iii) the length of any contract, (iv) the inclusion of an option clause in any contract proposed, and (v) the right of a team to assign any contract proposed to another team;

(f) All documents relating to each such discussion.

Answer:

See Answer to Interrogatory #7, above.

(a) See Answer to Interrogatory #7, above.

(b) See Answer to Interrogatory #7, above.

(c) See Answer to Interrogatory #7, above.

(d) See Answer to Interrogatory #7, above.

(e) (i) Yes.

(ii) No.

(iii) Yes.

(iv) No.

(v) Yes.

Chester Walker cannot now recall any other specific subjects discussed over many years of negotiations which the NBA defendants may be interested in, other than the items specifically referred to above and perhaps a no-cut contract.

(f) All relevant documents will be produced.

Interrogatory #9.

Identify all documents you sent to or received from professional athletic teams other than those teams identified in the response to Interrogatory 7.

Answer:

All relevant documents will be produced.

Interrogatory #10.

In your contract negotiations with professional basketball teams, have you ever been represented by an agent, attorney or representative of any kind? If so:

(a) List the years in which you were represented by such a representative;

(b) For each year list the name and last known address of each such representative;

(c) For each such year set forth the compensation arrangements you had with each such representative.

Answer:

Yes.

(a) 1969, 1970, 1972, 1974.

(b) Ed Keating, One Erieview Plaza, Cleveland, Ohio; and Shelley Bendit, Philadelphia, Pennsylvania.

(c) Objected to.

Interrogatory #11.

Have you ever received compensation for promotional activities, including, without limitation, publicity appearances, product endorsements, etc.? If so, for each company which compensated you for promotional activity:

(a) List the names and addresses of each such company;

(b) Identify the persons at each company with whom you discussed compensation arrangements for such promotional activity;

(c) Explain exactly what the promotional activity consisted of;

(d) State the period of time in which you were engaged in each such type of promotional activity;

(e) Set forth the amount of income, by year and company, you received for each such promotional activity;

(f) State whether any basketball team assisted you in becoming engaged to conduct such promotional activity, and if so (i) identify the team and (ii) set forth what the team did in that connection; and

(g) Identify all documents in your possession, custody or control relating in any way to such promotional activity.

Answer:

Objected to.

Interrogatory #12.

State, for the period of time from either 1966 or when you became a professional basketball player, whichever is

later, to date, all business activity for which you received compensation, other than playing professional basketball and the engaging in the promotional activity referred to in Interrogatory 11, and for all such other business activity state:

(a) Each type of business activity you were engaged in and the period you were engaged in such activity;

(b) The names and last known address of all employers for whom you worked, and the period during which you were employed by such employer;

(c) The income, by year, you received from each type of business activity; and

(d) Whether any basketball team assisted you in engaging in such business activity and if so (i) identify the team and (ii) set forth what the team did in that connection.

Answer:

Objected to.

Interrogatory #13.

For each year you played in the NBA set forth the amount of money you paid to the Players Association by dues, special assessment or otherwise.

Answer:

Objected to.

Interrogatory #14.

Do you claim that you incurred monetary damage as a result of the actions of the NBA and its teams set forth in the complaint? If so:

(a) State the amount of your financial injury;

(b) Set forth in detail the manner in which you calculate such damages including, without limitation, the amount of damages, if any, and how you calculate them, you claim to have incurred as a result of (i) the NBA college draft; (ii) the option clause in the NBA Uniform

Player Contract; (iii) the right of an NBA team to assign a player's contract to another team; (iv) NBA regulations governing the rights of player and team upon expiration of the option clause in a player contract; (v) your allegedly being prevented from playing in the NBA in a location of your choice, listing each such location; (vi) your alleged inability to negotiate with a club that offered more favorable conditions of employment, listing each such club; (vii) your loss of income from activities other than playing professional basketball; and (viii) all other items of damage you claim to have incurred; and

(c) Set forth all facts, legal contentions and documents upon which you will rely to prove said damages.

Answer:

See Answer to Interrogatory #16 of Plaintiffs' Answers to the NBA Defendants' First Set of Contention Interrogatories.

Interrogatory #15.

Identify (by title, court, index number and substance of the claim) all law suits in which you have been a party, in which the parties also included either the NBA, the ABA or any member team thereof.

Answer:

None.

Chester Walker
CHESTER WALKER

STATE OF ILLINOIS)
) ss.:
COUNTY OF COOK)

CHESTER WALKER, being duly sworn deposes and says I am a plaintiff in this action and have read the foregoing answers to interrogatories and the same are true of my own knowledge, information or belief based upon my own knowledge and records.

Chester Walker
CHESTER WALKER

Sworn to before me this
29th day of April, 1975.

Alice Mackauer
Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al., Plaintiffs,	:	
-against-	:	70 Civ. 1526 (RLC)
NATIONAL BASKETBALL ASSOCIATION, et al., Defendants.	:	
AMERICAN BASKETBALL ASSOCIATION, et al., Cross-claimants,	:	
-against-	:	
NATIONAL BASKETBALL ASSOCIATION, et al., Cross-defendants.	:	

Answer to Plaintiffs' First Set
OF Interrogatories By Defendant
NATIONAL BASKETBALL ASSOCIATION

Defendant NATIONAL BASKETBALL ASSOCIATION (hereinafter "NBA") makes the following answers to plaintiffs' First Set of Interrogatories.

Introduction

Many of the answers which follow refer to documents as being responsive to the particular interrogatory. This reference to documents is utilized in two ways. First, in response to requests for facts, it means that the information sought may be derived or ascertained from documents that will be produced by the NBA and that the burden of so doing is substantially the same for plaintiffs as for the NBA. Second, in response to requests for the "identity" of

documents, it means that the documents have been produced rather than identified.

Document production by the NBA is now going forward, and it is expected that at least 40,000 and perhaps as many as 60,000 documents will ultimately be produced by the NBA. Because of the enormity of the task of reviewing NBA documents, the identification of such documents (by stamping of identification numbers) has not been completed. The NBA defendants recognize, however, the obligation of a party to designate with some reasonable particularity the documents upon which it relies as being responsive to a particular interrogatory. Accordingly, to the extent that a particular document responsive to an interrogatory is not immediately identifiable (such as the NBA By-laws and Constitution, which are easily identifiable), the NBA defendants will undertake to provide additional identification when the task of reviewing and stamping is completed.

The NBA would also note that these interrogatory answers are required to be served prior to the review of documents being produced. Because much of the information sought by plaintiffs and many of the facts and/or contentions upon which the NBA defendants will rely are set forth in or supported by the documents that the NBA will produce, these answers are likely to be supplemented upon completion of the review, identification and organization of such documents.

These answers are served subject to the responses and objections* of the NBA defendants dated March 31, 1975, to Plaintiffs' First Set of Interrogatories.

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* To the extent that said objections have been withdrawn by agreement of counsel, the answers to the interrogatories will be contained in the NBA's supplemental answers to plaintiffs' first set of interrogatories.

Interrogatory 1. State for each year: (a) the name of each NBA member team in operation during the period and the name and form of the business entity under which each such member team did or does business; (b) the address of the principal place of business of each such business entity; (c) the place and date of incorporation or filing of partnership certification or permit, license, trust deed to do business of each such entity; (d) the date and type of any change in form of each such entity.

Answer to 1:

(a) The names of all NBA teams and the entities owning them are set forth in the documents produced by the NBA, in particular the NBA guides, the minutes of the Board of Governors meetings, documents relating to NBA organization and expansion, etc. Subject to a review of said documents, it is believed that the name of each member team in operation during the period and the name and form of the business entity owning each such member are as follows:

Team Name	Name and Form of Entity
Los Angeles Lakers	California Sports Incorporated (a corporation)
San Francisco Warriors Golden State Warriors	San Francisco Warriors (a limited partnership)
Portland Trailblazers	Pro Basketball, Inc. (a corporation)
Seattle Supersonics	First Northwest Industries of America Inc. (a corporation)
	Seattle Supersonics Corporation (a corporation)
Phoenix Suns	Phoenix Professional Basketball Club (a limited partnership)
Milwaukee Bucks	Milwaukee Professional Sports & Services, Inc. (a corporation)
Chicago Bulls	The Chicago Professional Sports Corportion (a corporation)
	The Chicago Professional Basketball Corporation (a corporation)
Cincinnati Royals Kansas City-Omaha Kings	The Cincinnati Basketball Club Company (Missouri Valley Pro Sports, Inc.) (a corporation)

	Kings Professional Basketball Club, Inc. (a corporation)
Boston Celtics	Boston Celtics Basketball Club (a Massachusetts trust)
	Boston Celtics Basketball Club (a Massachusetts trust)
	Boston Celtics Basketball Club, Inc. (a corporation)
New York Knickerbockers	Madison Square Garden Center, Inc. (a corporation)
Philadelphia 76ers	Riko Enterprises, Inc. (a corporation)
Buffalo Braves	N. Loeb Sports Enterprises, Inc (a corporation)
	Buffalo Braves, Inc. (a corporation)
Detroit Pistons	Detroit Pistons Basketball Club (a division of Zollner Corporation)
	Detroit Pistons Basketball Company (a limited partnership)
Baltimore Bullets Capital Bullets Washington Bullets	Capital Bullets Basketball Club, Inc (formerly The Baltimore Bullets Basketball Club, Inc.) (a corporation)
St. Louis Hawks Atlanta Hawks	St. Louis Hawks Basketball Club, Inc (a corporation)
	Atlanta Hawks Basketball, Inc. (a corporation)
	Athaw Holding Corp. (Atlanta Hawks Basketball, Inc.) (a corporation)
	Atlanta Coliseum, Inc. (a corporation)
San Diego Rockets Houston Rockets	San Diego Basketball Club (a limited partnership)
	Texas Sports Investments, Inc. (a corporation)
	Texas Pro Sports, Inc. (a corporation)
Cleveland Cavaliers	Cleveland Professional Basketball Company (a corporation)
New Orleans Jazz	New Orleans Basketball Club (a partnership)

The information sought by subparts (b), (c) and (d) is being furnished in the answers of the individual NBA defendants.

Interrogatory 2. Identify as to each NBA member team identified in your answer to Interrogatory No. 1 to be a corporation for the period, each officer and director, and each person having an equity interest of 3 per cent or more in the business.

Answer to 2:

Not being answered by this defendant.

Interrogatory 3. Identify as to each NBA member team identified in your answer to Interrogatory No. 1 to be a partnership, association, joint venture or other non-corporate entity for the period, each general and limited partner and each person having an equity interest of 3 per cent or more in the business.

Answer to 3:

Not being answered by this defendant.

Interrogatory 4. Identify all documents which directly or indirectly during the period set forth the rules, regulations and practices by which the NBA and its member teams operate and play professional basketball.

Answer to 4:

The documents responsive to this interrogatory, which will be produced by the NBA, are: (1) the By-Laws of the NBA; (2) the Constitution of the NBA; (3) the minutes of the meetings of the Board of Governors of the NBA; (4) communications from the NBA office to the individual teams concerning the interpretation and enforcement of the By-Laws and Constitution; and (5) the collective bargaining agreements between the NBA and the National Basketball Players Association ("Players Association"), and all individual contracts executed pursuant thereto.

Interrogatory 5. Identify (a) all changes during the period of each document identified in your answer to Interrogatory No. 4, (b) all persons who have custody of such documents; and (c) all persons who are familiar with the contents of such documents and such changes.

Answer to 5:

The documents responsive to this interrogatory, which will be produced by the NBA, are: (1) the versions of the NBA By-Laws and Constitution in effect during the period; (2) the minutes of the meetings of the Board of Governors of the NBA at which amendments to the By-Laws and Constitution were adopted; (3) all collective bargaining agreements and individual contracts in effect during the period; and (4) communications from the NBA office to the individual teams concerning the interpretation and enforcement of the By-Laws, Constitution and collective bargaining agreements.

Interrogatory 6. State since the inception of the NBA as to each NBA member team for each year (a) the name and address of every player; (b) the college or professional team for which each such player previously played; (c) the annual player compensation of each such player setting forth for each year the components of such player compensation; and (d) identify all persons who are familiar with such facts.

Answer to 6:

This interrogatory has been objected to.

Interrogatory 7. State whether since the inception of the NBA: (a) the NBA and its member teams have prescribed and adopted a Uniform Player Contract in a form substantially similar to the contract annexed as Exhibit A of the original complaint in this action; (b) the NBA and its member teams have prescribed and adopted any other form of employment and identify such other form of player contract.

Answer to 7:

(a) The NBA has, since its inception, prescribed and adopted a Uniform Player Contract for use as the basis of negotiations between individual players and the NBA members by which they are employed. Since the beginning of bargaining between the NBA and the Players Association, the member teams of the NBA have been required by the collective bargaining agreement with the Players Association to use, as the basis for negotiations with individual players, various

forms of the Uniform Player Contract, including the contract annexed as Exhibit A to the complaint.

(b) The NBA has prescribed and adopted other forms of player contracts (always by agreement with the Players Association subsequent to the formal execution of collective bargaining agreements) and forms of all of such contracts, to the extent not marked as exhibits to the papers in support of the NBA defendants' motion for summary judgment, will be produced by the NBA.

Interrogatory 8. If your answer to either subsection of Interrogatory No. 7 is in the affirmative, state whether the NBA member teams are required and/or have agreed only to enter into employment contracts with players which contracts contain all or substantially all of the terms of employment as set forth in that Uniform Player Contract or other form of standardized player contract.

Answer to 8:

The NBA member teams are and have been required, pursuant to collective bargaining agreements between the NBA and the Players Association, to use Uniform Player Contracts as the bases for negotiations between individual players and such member teams. By agreement with the Players Association and by operation of law, the NBA member teams have been prohibited from amending such Uniform Player Contracts (even with the consent and agreement of individual players) except insofar as such amendments would improve the terms and conditions of employment set forth in such Uniform Player Contracts.

Interrogatory 9. If your answer to Interrogatory No. 8 is in the affirmative, since the inception of the NBA (a) identify each such requirement and/or agreement, (b) identify all documents regarding such requirement and/or agreement, and (c) as to each such requirement and/or agreement state: (i) when and how it first went into effect, (ii) its purpose, and (iii) identify all persons who are

familiar with such requirements and/or agreements or with such documents.

Answer to 9:

(a) and (b) The documents responsive to this interrogatory, which will be produced by the NBA, are: (1) the collective bargaining agreements entered into by the NBA and the Players Association; the By-Laws of the NBA; and (3) communications from the NBA office to member teams.

(c) (i) The documents referred to in the answer to subparts (a) and (b) above, for the most part, contain dates;

(c) (ii) The purpose of those documents, insofar as they provide for uniform contracts, is to standardize the form of contract which would be the basis for individual negotiation between NBA member teams and individual players.

Interrogatory 10. As to each NBA player identified in your answer to Interrogatory No. 6, (a) state whether a NBA member team has entered into an employment contract containing additional and/or different terms of employment than those in the Uniform Player Contract, and (b) identify each such contract setting forth specifically all such additional and/or different terms, and (c) identify all persons familiar with such contracts and such facts.

Answer to 10:

(a) NBA member teams have entered into employment contracts with players containing additional and/or different terms of employment than those in the Uniform Player Contract.

(b) The documents responsive to this interrogatory are the contracts entered into between NBA teams and their players from the 1965-66 season to the present, which will be produced by the NBA.

Interrogatory 11. (a) State separately the basis for your contentions that: (i) the requirement and/or agreement among the NBA and its member teams relating to the use of the NBA Uniform Player Contract or other standarized employment contracts with players is necessary to organize

professional basketball as a league sport; (ii) such requirement and/or agreement preserves the competitive balance among the NBA teams and the integrity of the sport; and (iii) such requirement and/or agreement benefits the NBA players, setting forth specifically all such benefits and (b) identify: all documents upon which you base each such contentions; (ii) all persons who have custody of such documents; and (iii) all persons who are familiar with such contentions and/or documents.

Answer to 11:

The NBA is a joint venture, the members of which have joined together to present basketball games among teams as evenly matched as possible. To the extent that the NBA is the framework within which the members of the joint venture carry on an integrated business operation for mutual profit, and contracts are assigned from one team to another, use of standardized player contracts for players employed by the members of the joint venture is a simple business prerequisite.

Use of the Uniform Player Contract as a basis for negotiations between players and the NBA member teams by which they are employed -- a use required by the collective bargaining agreements between the NBA and the Players Association -- benefits NBA players by guaranteeing that the terms and conditions of their employment will, at a minimum, conform to the terms and conditions of employment agreed upon in collective bargaining between the NBA and the Players Association. In effect, the Uniform Player Contract sets forth the minimum terms and conditions of employment of NBA players, all of whom are permitted by the collective bargaining agreement to seek improvement in such terms and

conditions in the course of individual negotiations with NBA member teams.

The Players Association has, in collective bargaining, explicitly acquiesced in and agreed to use of the Uniform Player Contract as the basis for negotiations between individual players and member teams, from time to time seeking amendments to the Uniform Player Contract so as to improve the terms and conditions of employment of all NBA players.

In addition to this mutually recognized need for standardization, the use of a standard contract permits notification to all parties of certain minimum terms and conditions of employment in effect -- such as, for example, the exercise of the option clause at the salary payable to the player during the preceding year. Thus, the utilization of standardized contracts is a benefit to both employer and employee.

Interrogatory 12. (a) Do you contend that some or all of the clauses contained in the Uniform Player Contract are the result of collective bargaining among the NBA players and/or their representatives and the NBA, the NBA teams and/or their representatives, and (b) if so, identify each clause you contend resulted from collective bargaining, stating the basis for each such contention as to each clause, and (c) identify: (i) all documents upon which such contention is based; (ii) all persons who have custody of such documents; and (iii) all persons who are familiar with such contentions and/or documents.

Answer to 12:

(a) See answer to interrogatory 13(a).

(b) The basis for such contention is set forth in the papers filed by the NBA defendants in support of their motion for summary judgment and in the transcripts of argument had with respect to such motion.

Interrogatory 13. (a) Do you contend that the NBA players accepted or acquiesced in some or all of the clauses contained in the Uniform Player Contract in return for benefits from the NBA and its member teams, and (b) if so, identify: (i) each such benefit; (ii) all documents upon which such contention is based; (iii) all persons who have custody of such documents; and (iv) all persons who are familiar with such contentions and/or documents.

Answer to 13:

(a) The NBA defendants contend that all aspects of the relationship between NBA players and the NBA member teams by which they are employed -- including, inter alia, all of the clauses contained in the Uniform Player Contract, the so-called "reserve or option clause," the so-called "reserve compensation plan," the college player draft, the right of an NBA team to assign and/or sell a player's contract to another NBA team, and all terms or provisions of the NBA Constitution and/or the NBA By-Laws which relate directly or indirectly to the relationships between NBA players and the NBA and/or NBA member teams -- are the result of collective bargaining among the NBA players and/or their representatives, and/or that the NBA players have accepted or acquiesced in each such aspect of the relationship between them and the NBA member teams by which they are employed (as well as that relationship as a whole) in return for benefits from the NBA and its member teams.

(b) The benefits in return for which the NBA players have accepted or acquiesced in the above-described relationship (and each and every aspect thereof) are set forth in, and may be ascertained by examination of, the forms of Uniform Player Contract (as prescribed and required, and as amended from time, to time by the collective bargaining agreements), in the individual contracts executed by each NBA player and the NBA member team by which he is or has been employed (which contracts contain or have contained provisions

departing from the form of Uniform Player Contract prescribed and required by the collective bargaining agreements), the collective bargaining agreements between the NBA and the NBA Players Association (and the exhibits, attachments, and appendices thereto and amendments thereof), and in the provisions of the NBA Constitution and By-Laws. In addition, the NBA players have accepted or acquiesced in the above-described relationship (and each and every aspect thereof) in return for the NBA's forbearance from advancing proposals or demands, and/or its withdrawal or compromise of proposals or demands advanced, during the course of collective bargaining between the NBA and the Players Association.

See also the papers filed by the NBA defendants in support of their motion for summary judgment and the transcripts of argument had with respect to such motion.

The information as to which of the benefits (individually, or in combination, or in toto) contained in the foregoing documents caused the NBA players to accept or acquiesce in the above-described aspects of the relationship (individually, or in combination, or in toto) between NBA players and the NBA teams by which they are employed is exclusively within the knowledge of the plaintiffs.

Interrogatory 14. State since the inception of the NBA (a) the place, date and manner in which each form of the reserve or option clause came into being or went into effect; (b) the purpose of each such form of reserve or option clause.

Answer to 14:

(a) The documents responsive to this interrogatory, which will be produced by the NBA, are (1) the By-Laws of the

NBA; (2) the minutes of the NBA Board of Governors meetings; (3) communications from the NBA office to member teams; (4) collective bargaining agreements entered into between the Players Association and the NBA; (5) communications between the NBA and the Players Association; and (6) judicial interpretations of the NBA option clause.

(b) The option clause has been utilized* only for the purpose of permitting a one year extension of the contract. The option clause, as so utilized, provides an additional year within which the team and the player can negotiate, to their mutual satisfaction, an agreement upon terms and conditions of employment.

Interrogatory 15. (a) State your understanding or interpretation of the meaning of each form of the reserve or option clause referred to in your answer to Interrogatory No. 14, and each change, if any, of your understanding or interpretation of each such form, setting forth the date and reason for each such change, and (b) identify all persons familiar with such understandings or interpretations.

Answer to 15:

This interrogatory has been objected to.

Interrogatory 16. Identify since the inception of the NBA: (a) all documents, agreements and/or understandings relating to the creation and to each change in the NBA reserve or option clause; (b) all dealings, discussions, meetings, communications, negotiations or arrangements referring or relating thereto; (c) all persons who have custody of such documents; and (d) all persons who are familiar with such facts and/or documents.

Answer to 16:

The documents responsive to this interrogtory, all of which will be produced by the NBA, are set forth in response to Interrogatory 14.

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* See, for example, the opinion in New York Central Basketball, Inc. v. Barnett, a copy of which will be produced by the NBA.

Interrogatory 17. Do you contend that the present NBA reserve or option clause gives the NBA member teams either a one-year right of renewal or option, or a perpetual right of renewal or option and if neither, set forth your present understanding as to an NBA member team's renewal rights under that clause.

Answer to 17:

The option clause in the present NBA Uniform Player Contract, unless eliminated or modified by the individual negotiations which take place pursuant to the collective bargaining agreement between the NBA and the Players Association, gives the team a right to renew the contract for one year.

Interrogatory 18. (a) State the basis for each contention set forth in answer to Interrogatory No. 17 and (b) identify (i) all documents upon which each such contention is based; (ii) all persons who have custody of such documents; and (iii) all persons who are familiar with such contentions and/or documents.

Answer to 18:

See answer to Interrogatory 14.

Interrogatory 19. Did you ever interpret or understand the NBA reserve or option clause as giving either a perpetual right of renewal or option in favor of NBA teams, or a right of renewal or option in excess of one year.

Answer to 19:

This interrogatory has been objected to.

Interrogatory 20. If the answer to Interrogatory No. 19 is in the affirmative (a) set forth the time period during which each such interpretation or understanding applied, (b) the substance of each such interpretation or understanding, (c) identify: (i) all documents with respect thereto; (ii) all persons who have custody of such documents; and (iii) all persons who are familiar with such interpretation or understanding and/or documents.

Answer to 20:

This interrogatory has been objected to.

Interrogatory 21. (a) State separately the basis for your contentions that: (i) the NBA reserve or option clause is necessary to organize professional basketball as a league sport; (ii) the NBA reserve or option clause preserves

the competitive balance among the NBA teams and the integrity of the sport and (iii) the NBA reserve or option clause benefits the NBA players, setting forth specifically all such benefits and (b) identify: (i) all documents upon which you base these contentions; (ii) all persons who have custody of such documents; and (iii) all persons who are familiar with such contentions and/or documents.

Answer to 21:

See answer to Interrogatory 14. If a particular rule or practice is beneficial to the operation of a professional athletic league, it is beneficial to the players in that league, since there would be no market for the services of those players without the existence of the league.*

Interrogatory 22. (a) State the basis of your contention that the present NBA reserve or option clause as it exists in the form set forth in ¶22 of the Uniform Player Contract and/or any predecessor form thereof is or was the result of collective bargaining among the NBA players and/or their representatives and the NBA, the NBA teams and/or their representatives, and (b) identify: (i) all documents upon which you base this contention; (ii) all persons who have custody of such documents; and (iii) all persons who are familiar with such contention and/or documents.

Answer to 22:

See the papers filed by the NBA defendants in support of their motion for summary judgment and the transcripts of argument had with respect to such motion.

Interrogatory 23. (a) Do you contend that the NBA players accepted or acquiesced in the NBA reserve or option clause in return for benefits from the NBA and its member teams, and (b) if so, identify: (i) each such benefit; (ii) all documents upon which such contention is based;

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* In addition to the particular answer to all so-called "contention-seeking" interrogatories, the NBA's contentions are set forth with respect to all such interrogatories in the proceedings heretofore had in this action, the testimony before Congress in connection with proposed merger legislation and the documents relating to other NBA litigations which will be produced in response to plaintiffs' request for production of documents in this litigation.

(iii) all persons who have custody of such documents; and (iv) all persons who are familiar with such contentions and/or documents.

Answer to 23:

See answer to Interrogatory 13.

Interrogatory 24. Identify for each year during the period, each NBA player as to whom any NBA member team has exercised a "right" of contract renewal or option pursuant to the reserve or option clause, and as to each such player (b) state whether he ultimately achieved so-called "free agent" status as defined herein, and (c) identify: (i) all documents which in any way refer or relate to the exercise of such right of contract renewal; (ii) all persons who have custody of such documents; and (d) all persons who are familiar with such facts and/or documents.

Answer to 24:

The documents responsive to this interrogatory, which will be produced by the NBA, are the communications by which the NBA teams have exercised option clauses in contracts with their players and the notifications of such exercises to the NBA office. Three players who have achieved free agent status are Gary Gregor, Toby Kimball and Cazzie Russell.

Interrogatory 25. (a) Identify for each year during the period, each NBA player, excluding traded players as defined herein, who changed employment from one NBA team to another NBA team or from an NBA team to a team in the American Basketball Association ("ABA") without having played through his reserve or option year, (b) state as to each such player, the name of each NBA and/or NBA team involved in the change of employment and (c) identify: (i) all documents which in any way refer or relate to such change of employment; (ii) all persons who have custody of such documents; and (iii) all persons who are familiar with such facts and/or documents.

Answer to 25:

This interrogatory has been objected to.

Interrogatory 26. (a) Identify for each year during the period, each NBA player who has attained so-called "free agent" status as defined herein and as to each such player (b) state whether he thereafter negotiated and/or executed (i) a contract with the same or different NBA team

than he had played for in the year immediately prior thereto and identify such same or different team or, (ii) negotiated and/or executed a contract with a team in the ABA, or, (iii) retired from professional basketball; and (c) identify (i) all documents which refer or relate to such subsequent contract negotiation or execution and/or retirement; (ii) all persons who have custody of such documents; and (iii) all persons who are familiar with such facts and/or documents.

Answer to 26:

This interrogatory has been objected to.

Interrogatory 27. Identify for each year during the period (a) each NBA player who has changed employment from an NBA team to an ABA team, (b) each ABA player who has changed employment from an ABA team to an NBA team, (c) the name of the NBA and ABA teams involved in the change of employment of each such player; (d) all documents relating in any way to such change of employment; (e) all persons who have custody of such documents; and (f) all persons who are familiar with such facts and/or documents.

Answer to 27:

This interrogatory has been objected to.

Interrogatory 28. (a) State your understanding or interpretation of the meaning and set forth in full the substance of the reserve compensation plan as described in the Kennedy affidavit or otherwise, and (b) identify all persons familiar with such understanding or interpretation.

Answer to 28:

There is no such thing in the NBA as a "reserve compensation plan." NBA policy on what may occur when a player becomes a free agent is set forth in the affidavit of J. Walter Kennedy submitted in support of the motion for the NBA defendants for summary judgment against plaintiffs. Communications sent by and to Walter Kennedy, with respect to the NBA Commissioner's power to decide disputes between member teams, and the possible utilization of that power in the event that teams are unable to agree upon what arrangement should be made between the two teams involved in an option play-out and subsequent signing, will be produced by the NBA and will be identified by specific number when marking has been completed.

Interrogatory 29. State (a) the place, date and manner in which the reserve compensation plan, as described in the Kennedy affidavit as heretofore stated, first went into effect in the NBA and (b) the purpose of such plan.

Answer to 29:

a) The power of the Commissioner to decide disputes has always been granted by the NBA Constitution. Commissioner Kennedy set forth his interpretation of his power under the Constitution in April, 1974. All relevant documents will be produced by the NBA. (b) The purpose of the exercise of the Commissioner's power is set forth in the Kennedy affidavit.

Interrogatory 30. Identify (a) all agreements and/or understandings relating to the creation, imposition, institution and maintenance of the reserve compensation plan by the NBA and its member teams, and (b) all dealings, discussions, meetings, communications, negotiations or arrangements referring or relating thereto (c) all persons familiar with such agreements and/or understandings.

Answer to 30:

See answer to Interrogatories 28 and 29. All documents responsive to this interrogatory will be produced by the NBA and will be identified to plaintiffs by document identification number as soon as the reviewing and stamping of said documents is completed.

Interrogatory 31. Identify (a) all documents which relate or refer to the creation, imposition, institution and maintenance of the reserve compensation plan by the NBA and its member teams; (b) all persons who have custody of such documents; and (c) all persons familiar with such agreements and/or understandings.

Answer to 31:

See answer to Interrogatories 28, 29 and 30.

Interrogatory 32. (a) State separately the basis for your contentions that: (i) the NBA reserve compensation plan is necessary to organize professional basketball as a league sport; (ii) the NBA reserve compensation plan preserves the competitive balance among the NBA teams and the integrity of the sport; and (iii) the NBA reserve compensa-

tion plan benefits the NBA players, setting forth specifically all such benefits, and (b) identify: (i) all documents upon which you base these contentions; (ii) all persons who have custody of such documents; and (iii) all persons who are familiar with such contentions and/or documents.

Answer to 32:

Many practices are necessary and are utilized to organize professional basketball as a league sport.The NBA, as all professional athletic leagues, is structured on the principle that the successful presentation of the league format require games be played between teams which are, to the greatest extent possible, competitive with one another. If the games between teams operated by NBA members are attractive and fan interest in league standings and developments is maintained, the benefits to all are great. Fans who enjoy the product are willing to pay for tickets, television and other revenues increase, and funds for increased player salaries and fringe benefits are thus more available.

Accordingly, the basic enterprise in professional sports is not an individual team, but the league within which that team plays, for the teams of any professional athletic league can exist only as long as the league can exist. In order for an entire league to succeed, it therefore becomes necessary to insure that the available pool of playing talent be distributed among the teams in a way designed to keep those teams on as even a competitive basis as possible. This means negating, or attempting to negate, certain factors which would favor or tend to favor one team. For example, a team that is financially successful, competitively successful and well-located (from such points of view as climate, potential endorsements,etc.), would, absent other considerations, be better able than other teams to attract and sign the most talented athletes.

The natural result of this trend would be to diminish the ability of the weaker, financially less able, or less well located teams to compete, thereby impairing the entire competitive structure of the league. If teams within a league fail because of the development of such a situation, the fans, the league and the players suffer. Ticket revenues decline, the "television package" offered by the league is necessarily less attractive, and investment in teams is discouraged.

To protect against this situation, all major professional athletic leagues have developed some variation of a "player draft", the purpose of which is to insure not only that all teams in the league have an adequate source of playing personnel, but also to insure that those teams which have been the least successful competitively are given the opportunity to negotiate and contract with players of sufficient talent to improve the team performance and thus the league performance. For this reason, it is the general practice in the drafts conducted by professional athletic leagues for the teams with the worst won-lost records in a particular year to be given the right to select before those with better won-lost records.

In addition, the trade of draft choices and assignment of player contracts also enhances the ability of NBA teams to improve their competitive positions and maintain the competitive balance necessary for the successful operation of a professional athletic league. The ability to award compensation to a team which has lost a player by virtue of his play-out of an option also insures that a team will not be so weakened by such a circumstance as to damage its competitive

position, lessen fan identification or discourage the investment necessary for its successful operation.

The entire procedure by which the NBA operates is, of course, beneficial to the players, for without the generation of revenues which flow from the presentation of the league format, there would be no funds for payment of player salaries and fringe benefits, and without the league structure there would not even be a market for the services of most NBA players.

Interrogatory 33. As to each NBA player identified in your answer to Interrogatory No. [illegible] who entered into a contract with an NBA team other than the NBA team for which he played in the year immediately prior thereto state whether (a) the NBA reserve compensation plan was invoked by the prior team and, if so (b) the nature and/or amount which was awarded to such team, and (c) identify (i) all documents which relate or refer to such invocation and/or award; (ii) all persons who have custody of such documents; and (iii) all persons who are familiar with such facts and/or documents.

Answer to 33:

The only player who has played out his option, signed with another NBA team, and with respect to whom the Commissioner has been requested to exercise his power to finally determine disputes, is Cazzie Russell. All documents relating to the dispute will be produced by the NBA.

Interrogatory 34. (a) Do you contend that the NBA reserve compensation plan is the result of collective bargaining among the NBA players and/or their representatives and the NBA, the NBA teams and/or their representatives, and (b) if so, state the basis of such contention, and (c) identify: (i) all documents upon which such contention is based; (ii) all persons who have custody of such documents; and (iii) all persons who are familiar with such contentions and/or documents.

Answer to 34:

See answer to Interrogatory 13.

Interrogatory 35. (a) Do you contend that the NBA players accepted or acquiesced in the reserve compensation

plan in return for benefits from the NBA and its member teams, and (b) if so, identify: (i) each benefit; (ii) all documents upon which such contention is based; (iii) all persons who have custody of such documents; and (iv) all persons who are familiar with such contentions and/or documents.

Answer to 35:

See answer to Interrogatory 13.

Interrogatory 36. (a) State the basis for your contention that the reserve compensation plan is similar but not identical to the so-called Rozelle Rule in the National Football League, setting forth specifically all differences between such plan and the Rozelle Rule, and (b) identify (i) all documents upon which such contention is based; (ii) all persons who have custody of such documents; and (iii) all persons who are familiar with such contentions and/or documents.

Answer to 36:

As set forth in answer to Interrogatory 28, and the documents that will be produced by the NBA, the NBA Commissioner may, under his general power to determine disputes between NBA teams, award compensation to a team which has lost a player by option play-out and free agent status; or the Commissioner may decline, in light of all circumstances involved, to award any compensation at all. To the best of this defendant's information, the so-called "Rozelle" rule is a specific delegation of power to the NFL Commissioner which has been interpreted as requiring an award to be made, and may or may not authorize the Commissioner of the NFL to direct a monetary award to a team losing a player, in lieu of contract assignment or assignment of draft choices.

Interrogatory 37. (a) State whether the form of reserve compensation plan as it appeared in a letter dated September 2, 1971 from Edward S. Irish to Lawrence Fleisher has ever been applied by the NBA and its member teams, setting forth the dates of each such application and the names of the NBA teams and players involved and (b) identify (i) all documents referring or relating to the application and/or utilization of such form of reserve compensation plan; (ii) all persons who have custody of

such documents; and (iii) all persons who are familiar with such facts and/or documents.

Answer to 37:

The form of what plaintiffs refer to as the "Reserve Compensation Plan", as it appeared in a letter dated September 2, 1971 from Edward S. Irish to Lawrence Fleisher, has not been applied by the NBA and its member teams.

Interrogatory 38. (a) Do you contend that the form of reserve compensation plan referred to in Interrogatory No. 37 either resulted from or was a proposal in collective bargaining among the NBA players and/or their representatives and the NBA, the NBA teams and/or their representatives, and (b) if so, state the basis of such contention, and (c) identify (i) all documents upon which such contention is based; (ii) all persons who have custody of such documents; and (iii) all persons who are familiar with such contentions and/or documents.

Answer to 38:

(a) Yes.

(b) The letter speaks for itself.

(c) The letter speaks for itself.

Interrogatory 39. State from the inception of the NBA (a) the place, date and manner in which the NBA's college player draft first went into effect and (b) the purpose of such draft.

Answer to 39:

(a) All documents relating to the NBA player draft will be produced by the NBA. It is this defendant's belief that some form of the player draft has been in effect since the beginning of the NBA.

(b) The purpose of the draft is detailed in answer to interrogatory 32.

Interrogatory 40. Identify from the inception of the NBA (a) all agreements and/or understandings relating to the imposition of and/or changes in the NBA's college player draft, and all dealings, discussions, meetings, communications, negotiations or arrangements referring or re-

lating thereto, and (b) identify (i) all persons who are familiar with such agreements and/or understandings, (ii) all documents which relate or refer to the imposition of and/or changes in the NBA's college player draft, and (iii) all persons who have custody of such document; and (c) all persons familiar with such facts and/or documents.

Answer to 40:

The documents responsive to this Interrogatory, which will be produced by the NBA, are: (1) the NBA By-Laws; (2) the minutes of the meetings of the Board of Governors of the NBA; and (3) communications from the NBA office to the individual teams concerning the interpretation and enforcement of the NBA By-Laws.

Interrogatory 41. (a) Identify all players for each year during the period, who have remained on the college draft list after signing a contract with a team in the ABA, and as to all such players, state (b) state whether such player thereafter negotiated or executed (i) a contract with the same or different NBA team than the NBA whose college draft list the player was on, or (ii) negotiated and/or executed a contract with a different NBA team, or (iii) retired from professional basketball; and (c) identify (i) all documents which refer or relate to all such subsequent contract negotiations, executions or retirements; (ii) all persons who have custody of such documents, and (iii) all persons who are familiar with such facts and/or documents.

Answer to 41:

This interrogatory has been objected to.

Interrogatory 42. (a) State separately the basis for your contentions that: (i) the NBA's college player draft is necessary to organize professional basketball as a league sport; (ii) the NBA's college player draft preserves the competitive balance among the NBA teams and the intergrity of the sport; (iii) the NBA's college player draft benefits the NBA players, setting forth specifically all such benefits. (b) identify (i) all documents upon which you base these contentions, (ii) all persons who have custody of such documents, and (iii) all persons who are familiar with such facts and/or documents.

Answer to 42:

See answer to Interrogatory 32.

Interrogatory 43. (a) Do you contend that the NBA's college player draft is the result of collective bargaining among the NBA players and/or their representatives and the NBA, the NBA teams and/or their representatives,

and (b) if so, state the basis for such contention, and (c) identify (i) all documents upon which such contention is based; (ii) all persons who have custody of such documents; and (iii) all persons who are familiar with such contentions and/or documents.

Answer to 43:

See answer to Interrogatory 13.

Interrogatory 44. (a) Do you contend that the NBA players accepted or acquiesced in the college player draft in return for benefits from the NBA and its member teams, and (b) if so, identify (i) each such benefit; (i) all documents upon which such contention is based; (iii) all persons who have custody of such documents; and (iv) all persons who are familiar with such contentions and/or documents.

Answer to 44:

See answer to Interrogatory 13.

Interrogatory 45. Have you ever employed a player who played for another NBA team in the year immediately prior to such employment, regardless of whether such player had attained so-called "free agent" status?

Answer to 45:

The NBA does not itself employ players. However, the documents responsive to this interrogatory, which will be produced by the NBA, are: All player contracts and all documents relating to assignment of player contracts.

Interrogatory 46. If your answer to Interrogatory No. 45 is in the negative, state (a) each reason for following such a practice or procedure, and (b) whether you would continue to follow such a practice or procedure, absent the existence of the NBA reserve compensation or similar plan, and identify (i) all agreements, and/or understandings relating to the existence of any practice, procedure, rule or regulation regarding such matter and all meetings, discussions, communications or arrangements referring or relating thereto, (ii) all documents which relate or refer to such practice, procedure, rule or negotiation, (iii) all persons who have custody of such documents and (iv) all persons who are familiar with such facts and/or documents.

Answer to 46:

See answer to Interrogatory 45.

Interrogatory 47. If your answer to Interrogatory No. 45 is in the affirmative, state whether compensation

or other consideration, pursuant to the reserve compensation plan or otherwise was paid to the team of prior employment, describe such compensation or consideration and identify (a) all documents which relate in any way thereto; (b) all persons who have custody of such documents; and (c) all persons who are familiar with such facts and/or documents.

Answer to 47:

See answer to Interrogatory 45.

Interrogatory 48. State for each year during the period for each NBA team: (a) the name of every NBA player whose employment contract was sold, exchanged, assigned or transferred to another NBA team in a trade pursuant to ¶12 of the NBA Uniform Player Contract or otherwise; (b) the name of each such assignee team; (c) the nature and/or amount of consideration received by the assignor and/or seller team in connection with such trade; and identify all persons who are familiar with such facts.

Answer to 48:

The documents responsive to this interrogatory, which will be produced by the NBA, are the formal notices of assignment filed with the league and document related thereto.

Interrogatory 49. Identify (i) all documents which relate or refer to the trades identified in your answer to Interrogatory No. 48; (ii) all persons who have custody of such documents; and (iii) all persons who are familiar with such facts and/or documents.

Answer to 49:

See answer to Interrogatory 48.

Interrogatory 50. State separately the basis for your contentions that: (i) the assignment and/or trading of player contracts pursuant to ¶12 of the NBA Uniform Player Contract or otherwise is necessary to organized professional basketball as a league sport; (ii) such assignment and/or trading rights preserve the competitive balance among the NBA teams and the integrity of the sport; (iii) such assignment and/or trading rights benefit the NBA players, setting forth specifically all such benefits. (b) identify (i) all documents upon which you base these contentions; (ii) all persons who have custody of such documents; and (iii) all persons who are familiar with such contentions and/or documents.

Answer to 50:

See answer to Interrogatory 32.

Interrogatory 51. (a) Do you contend that the right of a NBA team to assign and/or sell a player's contract to another NBA team is the result of collective bargaining among the NBA players and/or their representatives and the NBA teams and/or their representatives, and (b) if so, state the basis for such contention, and (c) identify (i) all documents upon which such contention is based; (ii) all persons who have custody of such documents and (iii) all persons who are familiar with such contentions and/or documents.

Answer to 51:

See answer to Interrogatory 13.

Interrogatory 52. (a) Do you contend that the NBA players accepted or acquiesced in a NBA's member team's right to assign and/or sell a player's contract in return for benefits from the NBA and its member teams, and (b) if so, identify (i) each such benefit (ii) all documents upon which such contention is based; (iii) all persons who have custody of such documents; and (iv) all persons who are familiar with such contentions and/or documents.

Answer to 52:

See answer to Interrogatory 13.

Interrogatory 53. Identify (a) each person who was present at collective bargaining meetings or was otherwise involved or participated in collective bargaining on behalf of the NBA and its member teams with the NBA players and/or their representatives, (b) the dates and places of each such meeting or session; (c) all documents which relate or refer to such collective bargaining; (d) all persons who have custody of such documents; and (e) all persons who are familiar with such collective bargaining and/or documents.

Answer to 53:

Persons who were present at collective bargaining meetings or were otherwise involved or participated in collective bargaining on behalf of the NBA and its member teams are every member of the NBA Board of Governors who participated in formulation of NBA collective positions and policy (all of whom are listed in the minutes of the Board of Governors meetings), attorneys representing the NBA (Messrs. Gallantz, Silver, Lichtenstein, Ganz, Schacht and Samples, of the law firm of Proskauer Rose Goetz & Mendelsohn), Walter Kennedy, Simon P. Gourdine and any

other individual who may be identified in the volume of documents relating to collective bargaining that the NBA will produce.

Interrogatory 54. Identify (a) all agreements and/or understandings relating to a possible merger or combination of any kind ("merger") between or among the NBA and its member teams and the ABA and its member teams, (b) all dealings, discussions, meetings, communications, negotiations or arrangements referring or relating thereto, and (c) all persons familiar with such facts.

Answer to 54:

This interrogatory has been objected to.

Interrogatory 55. Identify (i) all documents which relate or refer to any such merger; (ii) all persons who have custody of such documents; and (iii) all persons who are familiar with such documents.

Answer to 55:

This interrogatory has been objected to.

Interrogatory 56. Identify (a) all agreements and/or understandings relating to any non-competition for players services between the NBA and its member teams and the ABA and its member teams, (b) all dealings, discussions, meetings, communications, negotiations or arrangements referring or relating thereto, and (c) all persons familiar with such facts.

Answer to 56:

This interrogatory has been objected to.

Interrogatory 57. Identify (i) all documents which relate or refer to any such non-competition agreements or understandings (ii) all persons who have custody of such documents and (iii) all persons who are familiar with such facts and/or documents.

Answer to 57:

This interrogatory has been objected to.

Interrogatory 58. (a) Do you contend that the proposed merger and/or the non-competition agreements or understandings between the NBA and the ABA were or are the result of collective bargaining among the NBA players and/or their representatives and the NBA, the NBA teams and/or their representatives, and (b) if so, state the basis for such contention, and (c) identify (i) all documents upon

which such contention is based, (ii) all persons who have custody of such documents; and (iii) all persons who are familiar with such contentions and/or documents.

Answer to 58:

This interrogatory has been objected to.

Interrogatory 59. Do you contend that the NBA players have accepted or acquiesced in the proposed merger and/or the non-competition agreements or understandings between the NBA and the ABA in return for benefits from the NBA and its member teams, and (b) if so, identify (i) each such benefit, (ii) all documents upon which such contention is based, (iii) all persons who have custody of such documents and (iv) all persons who are familiar with such contentions and/or documents.

Answer to 59:

This interrogatory has been objected to.

Interrogatory 60. (a) Do you contend that the proposed merger and/or the non-competition agreements or understandings will benefit or have benefited the NBA players and if so, (b) state the basis for such contention setting forth specifically all such benefits and (c) identify (i) all documents upon which such contention is based, (ii) all persons who have custody of such documents; and (iii) all persons familiar with such contentions and/or documents.

Answer to 60:

This interrogatory has been objected to.

Interrogatory 61. Identify all other agreements, contracts or understandings (not previously identified in your answers to Interrogatories Nos. 54 through 57) between or among the NBA and the NBA members and the ABA and the ABA member teams.

Answer to 61:

This interrogatory has been objected to.

Interrogatory 62. Identify (i) documents (not previously identified in your answers to Interrogatories 54 through 57) which relate or refer to such other agreements contracts or understandings as identified in your answer to Interrogatory No. 61; (ii) all persons who have custody of such documents; and (iii) all persons who are familiar with such documents.

Answer to 62:

This interrogatory has been objected to.

Interrogatory 63. (a) State the basis for your contention that plaintiffs' claims are barred by the applicable statute of limitations and laches, and (b) identify (i) all documents upon which this contention is based; (ii) all persons who have custody of such documents; and (iii) all persons who are familiar with such contentions and/or documents.

Answer to 63:

The use of a uniform player contract, the utilization of a player draft, the power of the NBA Commissioner to determine disputes between member teams, and the variety of other practices challenged by plaintiffs have, in one form or another, been a part of the structure of the NBA since its inception. Documents relating to all of these of these practices will be produced not only by the NBA but, to the extent such documents exist, by all NBA defendants.

Not only did plaintiffs (many of whom were in the league long prior to the institution of this lawsuit in 1970) fail to assert the claims set forth in the complaint prior thereto, but they have, through their collective bargaining unit, and by their negotiation and execution of individual Uniform Player Contracts, endorsed the structure of the NBA, which structure has formed the basis for the investments which owners of all NBA teams have made. Thus, not only are the claims set forth in the complaint barred by the Statute of Limitations, but by laches as well.

Interrogatory 64. (a) State the basis for your contention that plaintiffs' are barred by waiver from maintaining this action by reason of their respective Uniform Player Contracts and in particular, ¶21 thereof, and (b) identify (i) all documents upon which this contention is based; (ii) all persons who have custody of such documents; and (iii) all persons who are familiar with such contentions and/or documents.

Answer to 64:

When this action was commenced, paragraph 21 of

the Uniform Player Contract required that an action involving a dispute between an NBA player and team would be forever barred unless commenced within one year from the date when such dispute arose. None of the plaintiffs commenced an action within the requisite one year limitation period. Paragraph 21 of subsequent Uniform Player Contracts requires that all disputes be resolved in accordance with the grievance and arbitration procedure mandated by collective bargaining agreement. Plaintiffs have thus waived their right to assert the claims they advance in this action.

Interrogatory 65. (a) State the basis for your contention that competition among the NBA member teams in the acquisition of players would tend to cause the failure of the financially weaker teams and ultimately destroy the NBA as a league, identifying specifically each so-called financially weak team and (b) identify (i) all documents upon which this contention is based; (ii) all persons who have custody of such documents and (iii) all persons who are familiar with such contentions and/or documents.

Answer to 65:

Insofar as this interrogatory has not been objected to, the answer to provided by the answer to Interrogatory 32.

Interrogatory 66. Identify (by caption title, index No. and citation of all decisions officially reported or otherwise) all lawsuits, arbitrations or other adversary proceedings between or among any of the following: the NBA, NBA members teams, NBA players, the ABA, ABA member teams and ABA players, arising out of or in any way relating or referring to the reserve clause, or the reserve compensation plan, or the college draft, or the proposed merger, or the non-competition agreements or understandings between the NBA and the ABA, or your contentions that the NBA teams do not compete or that the restraints alleged in the complaint herein are not the result of any agreement, understanding, conspiracy or combination.

Answer to 66:

The documents responsive to this interrogatory, which have been produced by the NBA, are decisions in arbitrations under the collective bargaining agreement and the files reflecting litigations falling within the categories spelled out in the interrogatory.

Interrogatory 67. Identify all appearances before a federal or state administrative or congressional body by the NBA, its member teams and/or their representatives, with respect to any matter referred to in Interrogatory No. 66, identifying the person or persons making such appearance and stating whether a transcript of such appearance was maintained.

Answer to 67:

The documents responsive to this interrogatory, which will be produced by the NBA, are the transcripts and/or records of proceedings before any of such bodies, statements prepared for submission to such bodies, or articles or memoranda reflecting such appearances.

Interrogatory 68. (a) Do you contend that because of the so-called joint venture nature of the NBA's league structure, the restraints alleged in the amended and supplemental complaint are not products of an agreement, contract, combination or conspiracy within the meaning of the antitrust laws, and (b) if so, state the basis for such contention, and (c) identify (i) all documents upon which such contention is based; (ii) all persons who have custody of such documents and (iii) all persons who are familiar with such contentions and/or documents.

Answer to 68:

The documents responsive to this interrogatory are (1) the memoranda submitted to the Court in the action entitled Levin and Lipton v. NBA, and the documents referred to therein, which will be produced by the NBA; and (2) the affidavits and memoranda heretofore submitted by the NBA defendants in this action.

Interrogatory 69. (a) Do you contend that because of the so-called joint venture nature of the NBA's league structure, the NBA member teams do not compete inter se in the acquisition of players, or otherwise, and (b) if so, state the basis of such contention, and (c) identify (i) all documents upon which such contention is based; (ii) all persons who have custody of such documents; and (iii) all persons who are familiar with such contentions and/or documents.

Answer to 69:

See answer to Interrogatory 32. The documents responsive to this interrogatory are (1) the memoranda

submitted to the Court in the action entitled Levin and Lipton v. NBA, and the documents referred to therein; and (2) the affidavits and memoranda heretofore submitted by the NBA defendants in this action.

Interrogatory 70. State since the inception of the NBA (a) the form of business entity under which the NBA operates; (b) its present principal office and domicile; (c) its present business address; (d) all its directors, officers, employees, and agents, identifying each by name and address and job description.

Answer to 70:

(a) Since its inception the NBA has operated as an unincorporated association, or joint venture. Documents reflecting the status of the NBA since is inception will be produced by the NBA.

(b) and (c) The principal office and business address of the NBA is Two Pennsylvania Plaza, New York, New York.

(d) Officers and employees of the NBA are listed in the NBA guides, which have been produced by the NBA.

Interrogatory 71. With respect to the restraints alleged in the amended and supplemental complaint herein and your contentions with respect thereto, state since the inception of the NBA (a) each meeting which the NBA has conducted during the time period at which representatives of NBA member teams were in attendance; (b) the date of each such meeting; (c) the location of each such meeting; (d) the names of the teams and their representatives present at each such meeting; and (e) identify (i) all documents which, directly or indirectly, relate to each such meeting; (ii) all persons who have custody of such documents; and (iii) all persons who are familiar with such meetings and/or documents.

Answer to 71:

This interrogatory has been objected to.

Interrogatory 72. (a) Set forth each instance during the period in which the NBA has taken any action against or made any reprimand of a NBA member team for violating the NBA rules relating to the college draft and/or to so-called "tampering" with a player from another NBA

member team; (b) identify each such team; (c) describe the nature of each action or reprimand; (d) state the individuals or representatives of each team found by the NBA to have violated such draft and/or tampering rules and (e) identify all documents which relate to such matters; (ii) all persons who have custody of such documents; and all persons who are familiar with such facts and/or documents.

Answer to 72:

Documents responsive to this interrogatory, which will be provided by the NBA, are (1) the minutes of NBA Board of Governors meetings; (2) communications from the league office to the NBA; (3) statements issued by the league office; and (4) files of litigation arising out of or relating to the matters set forth in this interrogatory.

Interrogatory 73. (a) Do you contend that some or all of the terms or provisions of the NBA Constitution and/or the NBA by-laws were or are a result of collective bargaining among the NBA players and/or their representatives and the NBA teams and/or their representatives, and (b) if so, state the basis of such contention, identifying each such term or provision, and (c) identify (i) all documents upon which such contention is based; (ii) all persons who have custody of such documents and (iii) all persons who are familiar with such contentions and/or documents.

Answer to 73:

See answer to Interrogatory 13.

Interrogatory 74. (a) Identify for each year since the inception of the NBA, each NBA player who has been on a "voluntary retired list" as defined in Article 1.11 of the NBA By-laws, and as to each such player, state (b) the team or teams whose such list each player's name has appeared and the period of time on which such player's name appeared, (c) the team or teams which have attempted in any way to reacquire or retain any priority to reacquire such players' services; and (d) identify (i) all documents which refer or relate to all negotiations, contract executions, discussions and meetings concerning such list or priority or reacquisition, (ii) all persons who have custody of such documents; and (ii) all persons who are familiar with such facts and/or documents.

Answer to 74:

Documents responsive to this interrogatory, which will be provided by the NBA, are the NBA player lists and all documents relating to player acquisition.

Dated: New York, New York
May 5, 1975

NATIONAL BASKETBALL ASSOCIATION

By _____
Simon P. Gourdine
Deputy Commissioner

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

SIMON P. GOURDINE, being duly sworn, deposes and says that he is the Deputy Commissioner of the National Basketball Association, one of the defendants in the above-entitled action; that he has read the foregoing answers to plaintiffs' interrogatories and that said answers are true and correct to the best of his knowledge, information and belief.

Simon P. Gourdine

Sworn to before me this
5th day of May, 1975.

David J. Stern
Notary Public

DAVID J. STERN
NOTARY PUBLIC, State of New York
No. 31-0181070
Qualified in New York County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al., Plaintiffs, -against- NATIONAL BASKETBALL ASSOCIATION, et al., Defendants.	70 Civ. 1526 (RLC) AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

SIMON P. GOURDINE, being duly sworn, deposes and says:

1. I am the Deputy Commissioner of defendant National Basketball Association ("NBA") and submit this affidavit in opposition to the motion of plaintiffs to have the Court rule that the NBA's methods of operation challenged in the complaint are per se violations of the antitrust laws and preclude the NBA from offering any proof at trial of the reasonableness of its practices.

The Organization of the NBA

2. The NBA is a joint venture organized to operate a league consisting of professional basketball teams, and has been in existence since 1946. The NBA has 18 members each of which holds a franchise to operate a team in the league operated by the NBA. Insofar as the member joint venturers engage in the

business of basketball they do it not separately, but as partners in the operation of a single league which is their only product and the predicate to their individual existence.

3. Accordingly, the right of each member to regulate its own affairs is expressly made subject to the provisions of the Constitution and By-Laws of the NBA.

4. The members of the NBA are financially interdependent to the following extent:

(a) Virtually all revenues not of a uniquely local nature (home games, ticket sales and local media broadcasts) are allocated on a league basis. These include income from network television contracts, a major item of revenue, which is divided evenly among all teams, regardless of which team's games are actually televised and regardless of which are the best "television attractions."

(b) When new members are admitted to the NBA by "expansion", and pay for a franchise and players, the proceeds are divided equally among the existing members, regardless of the artistic or financial contributions made -- or not made -- by the team of a particular member.

(c) If a team operated by a member is successful in league play and reaches the "play-offs", 45% of the member's gate receipts for such play-off games are paid to the league which, after making payments to the players

involved and reimbursing the participating teams and officials for traveling and maintenance costs, distributes the balance equally to all members.

(d) The operations of the NBA are financed by an assessment -- currently 8% -- on the gate receipts of each team.

(e) In the event that the gate receipts from play-off games are insufficient to meet the necessary payments for players, officials, traveling and maintenance, all members of the League, including those not in the play-offs, are obligated, on an equal basis, to make up the deficit.

The Necessity to Maintain Competitive Balance

5. The NBA, as all professional athletic leagues, is structured on the principle that the successful presentation of the league format requires games be played between teams which are, to the greatest extent possible, competitive with one another. If the games between teams operated by NBA members are attractive and fan interest in league standings and developments is maintained, the benefits to all are great. Fans who enjoy the product are willing to pay for tickets, television and other revenues increase, and funds for increased player salaries and fringe benefits are thus more available.

6. In order for an entire league to succeed, it therefore becomes necessary to insure that the available

pool of playing talent be distributed among the teams in a way designed to keep those teams on as even a competitive basis as possible. This means negating, or attempting to negate, certain factors which would favor or tend to favor one team. For example, a team, that is financially successful, competitively successful and well-located (from such points of view as climate, potential endorsements, etc.) would, absent other considerations, be better able than other teams to attract and sign the most talented athletes.

8. One of the practices by which the NBA has attempted to maintain the competitive balance among its member teams is the "player draft." The player draft, which is conducted in the spring of each year, is the method by which rights to negotiate with eligible players are accorded to NBA teams. The purpose of the draft is to insure not only that all teams in the league have an adequate source of playing personnel, but also to insure that those teams which have been the least successful competitively are given the opportunity to negotiate and contract with players of sufficient talent to improve the team performance and thus the league performance. For this reason, it is the general practice in the drafts conducted by all major professional sports leagues for the teams with the worst won-lost records in a particular year to be given the right to select before those with better won-lost records.

9. In addition, the trade of draft choices and assignment of player contracts also enhances the ability of NBA teams to improve their competitive positions and maintain

the competitive balance necessary for the successful operation of a professional athletic league. The ability to award compensation to a team which has lost a player by virtue of his play-out of an option also insures that a team will not be so weakened by such a circumstance as to damage its competitive position.

10. The NBA practices challenged by plaintiffs are all designed to maintain competitive balance, increase spectator and fan interest, generate revenues and encourage the investment necessary to operate an NBA team. Without the generation of income which flows from the very operations plaintiffs attack, there would be no funds for payment of player salaries and fringe benefits and, indeed, without the league structure there would not even be a market for the services of most NBA players.

11. Since the challenged practices are not motivated by anticompetitive purposes but rather are essential to the very existence of an organized sports league, the per se analysis offered by plaintiffs should be rejected.

Simon P. Gourdine
SIMON P. GOURDINE

Sworn to before me this
30th day of May, 1975

Mary C. Assante
Notary Public

MARY C. ASSANTE
NOTARY PUBLIC, State of New York
No. 31-4516050
Qualified in New York County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al., Plaintiffs,	:	
-against-	:	70 Civ. 1526 (RLC)
NATIONAL BASKETBALL ASSOCIATION, et al., Defendants.	:	
AMERICAN BASKETBALL ASSOCIATION, et al., Cross-claimants,	:	
-against-	:	
NATIONAL BASKETBALL ASSOCIATION, et al., Cross-defendants.	:	

Supplemental Answers to Plaintiffs' First Set Of Interrogatories By Defendant NATIONAL BASKETBALL ASSOCIATION

Defendant NATIONAL BASKETBALL ASSOCIATION (hereinafter "NBA") makes the following supplemental answers to plaintiffs' First Set of Interrogatories.

Introduction

Many of the answers which follow refer to documents as being responsive to the particular interrogatory. This reference to documents is utilized in two ways. First, in response to requests for facts, it means that the information sought may be derived or ascertained from documents that will be produced by the NBA and that the burden of so doing is substantially the same for plaintiffs as for the

NBA. Second, in response to requests for the "identity" of documents, it means that the documents have been produced rather than identified. The numbers by which particular documents are identified are the production numbers stamped upon such document by the NBA.

These interrogatory answers are required to be served prior to the review of documents being produced. Because much of the information sought by plaintiffs and many of the facts and/or contentions upon which the NBA defendants will rely are set forth in or supported by the documents that the NBA will produce, these answers are likely to be supplemented upon completion of the review, identification and organization of such documents.

These answers are served subject to the responses and objections of the NBA defendants dated March 31, 1975, to Plaintiffs' First Set of Interrogatories, as modified by counsels' Joint Memorandum dated April 25, 1975.

Interrogatory 1. State for each year: (a) the name of each NBA member team in operation during the period and the name and form of the business entity under which each such member team did or does business; (b) the address of the principal place of business of each such business entity, (c) the place and date of incorporation or filing of partnership certification or permit, license, trust deed to do business of each such entity; (d) the date and type of any change in form of each such entity.

Answer to 1:

(a) The names of all NBA teams and the entities owning them are set forth in the documents produced by the NBA, in particular the NBA guides (#01-06571 to 01-06580), the minutes of the Board of Governors meetings (#01-25315 to #01-25492), documents relating to NBA organization (#01-31665 to 01-31668) and expansion (#01-22091 to 01-22134), etc. Subject to a review of said documents, it is believed that the name of each member team in operation during the period

and the name and form of the business entity owning each such member are as follows:

Team Name	Name and Form of Entity
Los Angeles Lakers	California Sports Incorporated (a corporation)
San Francisco Warriors Golden State Warriors	San Francisco Warriors (a limited partnership)
Portland Trailblazers	Pro Basketball, Inc. (a corporation)
Seattle Supersonics	First Northwest Industries of America Inc. (a corporation)
	Seattle Supersonics Corporation (a corporation)
Phoenix Suns	Phoenix Professional Basketball Club (a limited partnership)
Milwaukee Bucks	Milwaukee Professional Sports & Services, Inc. (a corporation)
Chicago Bulls	The Chicago Professional Sports Corporation (a corporation)
	The Chicago Professional Basketball Corporation (a corporation)
Cincinnati Royals Kansas City-Omaha Kings	The Cincinnati Basketball Club Company (Missouri Valley Pro Sports, Inc.) (a corporation)
	Kings Professional Basketball Club, Inc. (a corporation)
Boston Celtics	Boston Celtics Basketball Club (a Massachusetts trust)
	Boston Celtics Basketball Club (a Massachusetts trust)
	Boston Celtics Basketball Club, Inc. (a corporation).
New York Knickerbockers	Madison Square Garden Center, Inc. (a corporation)
Philadelphia 76ers	Riko Enterprises, Inc. (a corporation)
Buffalo Braves	New-Loeb Sports Enterprises, Inc (a corporation)
	Buffalo Braves, Inc. (a corporation)
Detroit Pistons	Detroit Pistons Basketball Club (a division of Zollner Corporation)

	Detroit Pistons Basketball Company (a limited partnership)
Baltimore Bullets Capital Bullets Washington Bullets	Capital Bullets Basketball Club, Inc. (formerly The Baltimore Bullets Basketball Club, Inc.) (a corporation)
St. Louis Hawks Atlanta Hawks	St. Louis Hawks Basketball Club, Inc. (a corporation)
	Atlanta Hawks Basketball, Inc. (a corporation)
	Athaw Holding Corp. (Atlanta Hawks Basketball, Inc.) (a corporation)
	Atlanta Coliseum, Inc. (a corporation)
San Diego Rockets Houston Rockets	San Diego Basketball Club (a limited partnership)
	Texas Sports Investments, Inc. (a corporation)
	Texas Pro Sports, Inc. (a corporation)
Cleveland Cavaliers	Cleveland Professional Basketball Company (a corporation)
New Orleans Jazz	New Orleans Basketball Club (a partnership)

The information sought by subparts (b), (c) and (d) is being furnished in the answers of the individual NBA defendants.

Interrogatory 4. Identify all documents which directly or indirectly during the period set forth the rules, regulations and practices by which the NBA and its member teams operate and play professional basketball.

Answer to 4:

Documents responsive to this interrogatory, which have been produced by the NBA, are: (1) the By-Laws of the NBA (#01-07394 to 01-07401; 50-11664 to 50-11723); (2) the Constitution of the NBA (#01-07394 to 01-07401; 50-11664 to 50-11723); (3) the minutes of the meetings of the Board of Governors of the NBA (#01-25315 to 01-25492);

(4) memoranda from the NBA office to the individual teams concerning the interpretation and enforcement of the By-Laws and Constitution (See #01-14414 to 01-16216); and (5) the collective bargaining agreements between the NBA and the National Basketball Players Association ("Players Association") and all individual contracts executed pursuant thereto (01-01706 to 01-01942: 1966-67, 1968-69 A-L Player Contracts; 01-01943 to 01-02109: 1967-67, 1968-69 M-Z Player Contracts; 01-02110 to 01-02276: 1969 Player Contracts; 01-02277 to 01-02667: 1970 Player Contracts; 01-02669 to 01-03057: 1971 Player Contracts; 01-03058 to 01-03299: 1972 A-L Player Contracts; 01-03300 to 01-03583: 1972 M-Z Player Contracts; 01-03584 to 01-03898: 1972-73 A-L Player Contracts; 01-03899 to 01-04202: 1972-73 M-Z Player Contracts; 01-04203 to 01-04476: 1973-74, 1974-75 A-L Player Contracts; 01-04477 to 01-04696a: 1973-74, 1974-75 M-Z Player Contracts; 01-04697 to 01-04701: Contracts for 1970; 01-04702 to 01-05399: Current Contracts; 01-06093 to 01-06224: 1965-66 Player Contracts).

Interrogatory 14. State since the inception of the NBA (a) the place, date and manner in which each form of the reserve or option clause came into being or went into effect; (b) the purpose of each such form of reserve or option clause.

Answer to 14:

The communications between the NBA and the Players Association referred to in the initial NBA answers to Interrogatories have been stamped with the following identification numbers: 01-05400 to 01-05435: Players Association - 1968 Misc. Correspondence; 01-05436 to 01-05502: Players Association - 1969 Misc. Correspondence; 01-05503 to 01-05597 Players Association 1970-71; 01-05598 to 01-05623: Players

Association - 1971-72 Labor Negotiations; 01-05624 to 01-05715 Players Association 1972; 01-05716 to 01-05799: Players Association Negotiations 1972-73; 01-05800 to 01-05875: Players Association 1973; 01-05884 to 01-05943: Players Association 1974; 01-05974 to 01-06090: Players Association; 01-07503 to 01-07571: Players Association Correspondence 1966-67; 01-17934 to 01-17946: Players Association - 1971 Misc. Correspondence).

Interrogatory 15. (a) State your contention as to the meaning of each form of the reserve or option clause in effect since the inception of the NBA and set forth each change in such meaning, the date or each such change and reason for each such change, and (b) identify all persons familiar with such understandings or interpretations.

Answer to 15: See Answers to Interrogatories 14 and 17 of the NBA's initial Answers to Interrogatories.

Interrogatory 19. Did you ever contend that the NBA reserve or option clause in any form gives or gave either a perpetual right of renewal or option in favor of NBA teams, or a right of renewal or option in excess of one year.

Answer to 19:

Although prior to 1961 persons associated with the NBA may on occasion have stated the opinion that the option permitted successive renewals of the contract, the clause has never been so utilized.

Interrogatory 20. If the answer to Interrogatory No. 19 is in the affirmative (a) set forth the time period during which each such interpretation or understanding applied, (b) the substance of each such interpretation or understanding, (c) identify: (i) all documents with respect thereto; (ii) all persons who have custody of such documents; and (iii) all persons who are familiar with such interpretation or understanding and/or documents.

Answer to 20:

See answers to Interrogatories 14(b) and 17 of the NBA's initial Answers to Interrogatories.

Interrogatory 33. As to each NBA player identified in your answer to Interrogatory No. 26 who entered into a contract with an NBA team other than the NBA team for which he played in the year immediately prior thereto state whether (a) the NBA reserve compensation plan was invoked by the prior team and, if so (b) the nature and/or amount which was awarded to such team, and (c) identify (i) all documents which relate or refer to such invocation and/or award; (ii) all persons who have custody of such documents; and (iii) all persons who are familiar with such facts and/or documents.

Answer to 33:

The only player who has played out his option, signed with another NBA team, and with respect to whom the Commissioner has been requested to exercise his power to finally determine disputes, is Cazzie Russell. Documents which relate to Cazzie Russell have been stamped with the following identification numbers: 01-16334 to 01-16351; 01-33464 to 01-33556.

Interrogatory 48. State for each year during the period for each NBA team: (a) the name of every NBA player whose employment contract was sold, exchanged, assigned or transferred to another NBA team in a trade pursuant to ¶12 of the NBA Uniform Player Contract or otherwise; (b) the name of each such assignee team; (c) the nature and/or amount of consideration received by the assignor and/or seller team in connection with such trade; and identify all persons who are familiar with such facts.

Answer to 48:

Documents responsive to this interrogatory, which have been produced by the NBA, are the formal notices of assignment filed with the league and documents related thereto. See:

01-06539 to 01-06570	Player Assignment Forms 1973
01-06581 to 01-06733	Uniform Agreements for Assignment of Player Contracts - 1972.
01-06734 to 01-06836	Uniform Agreements for Assignment of Player Contracts - 1971.
01-08523 to 01-08613	Uniform Agreements for Assignment of Player Contracts - 1969-70.
01-07740 to 01-07827	Player Transactions Jan - May 1970.
01-07828 to 01-07909	Nov./Dec. Player Transactions 1971.
01-07910 to 01-07962	Sept./Oct. Player Transactions 1971.
01-07963 to 01-08045	Player Transactions Jan.-Aug. 1971.

01-08047 to 01-08244	Player Transactions 1972.
01-08394 to 01-08522	Player Transactions/Trades 1971-72, 1974-75.
01-17973 to 01-18104	Player Transactions 1973-74.
01-18105 to 01-18303	Player Transactions 1973-74.
01-18902 to 01-18954	Player Transactions 1966.
01-18955 to 01-19456	Player Transactions 1966-67, 1967-68.
01-19457to 01-19717	Player Transactions 1968-69.
01-19748 to 01-20077	Player Transactions 1969-70.

Interrogatory 66. Identify (by caption title, index No. and citation of all decisions officially reported or otherwise) all lawsuits, arbitrations or other adversary proceedings between or among any of the following: the NBA, NBA members teams, NBA players, the ABA, ABA member teams and ABA players, arising out of or in any way relating or referring to the reserve clause, or the reserve compensation plan, or the college draft, or the proposed merger, or the non-competition agreements or understandings between the NBA and the ABA, or your contentions that the NBA teams do not compete or that the restraints alleged in the complaint herein are not the result of any agreement, understanding, conspiracy or combination.

Answer to 66:

Documents responsive to this interrogatory, which have been produced by the NBA, are decisions in arbitrations under the collective bargaining agreement and the files reflecting litigations falling within the categories spelled out in the interrogatory. See:

01-14122 to 01-14163	Julius Erving
01-16305 to 01-16323	Jim McDaniels
01-16334 to 01-16351	Cazzie Russell
01-17864 to 01-17866a	Jim McDaniels
01-17970 to 01-17971	Spencer Haywood
01-20370 to 01-20476	John Brisker
01-20658 to 01-20705	Spencer Haywood
01-22871 to 01-22934	Julius Erving
01-22935 to 01-23199	Spencer Haywood
50-12758 to 50-13300	Julius Erving
50-14218 to 50-14916	Barry
50-11823 to 50-12397	Player Litigation
50-10694 to 50-11418	Arbitration of Player Disputes
50-00852 to 50-03106	Spencer Haywood

Interrogatory 67. Identify all appearances before a federal or state administrative or congressional body by the NBA, its member teams and/or their representatives, with respect to any matter referred to in Interrogatory No. 66, identifying the person or persons making such appearance and stating whether a transcript of such appearance was maintained.

Answer to 67:

Documents responsive to this interrogatory, which have been produced by the NBA, are the transcripts and/or records of proceedings before any of such bodies, statements prepared for submission to such bodies, or articles or memoranda reflecting such appearances. See:

01-07402 Hearings on S2373 (9/21, 9/22, 9/23 - 1971)
01-07403 Hearings on S2373 (11/15/71, 1/25, 3/6, 5/3, 5/9 - 1972)
01-27649 to 01-27704 Congressional Testimony.

Interrogatory 68. (a) Do you contend that because of the so-called joint venture nature of the NBA's league structure, the restraints alleged in the amended and supplemental complaint are not products of an agreement, contract, combination or conspiracy within the meaning of the antitrust laws, and (b) if so, state the basis for such contention, and (c) identify (i) all documents upon which such contention is based; (ii) all persons who have custody of such documents; and (iii) all persons who are familiar with such contentions and/or documents.

Answer to 68:

Documents responsive to this interrogatory are (1) the memoranda submitted to the Court in the action entitled Levin and Lipton v. NBA, and the documents referred to therein, which have been produced by the NBA (See 50-07485 to 50-10666); and (2) the affidavits and memoranda heretofore submitted by the NBA defendants in this action.

Interrogatory 71. With respect to the restraints alleged in the amended and supplemental complaint herein and your contentions with respect thereto, state since the inception of the NBA (a) each meeting which the NBA has conducted during the time period at which representatives of NBA member teams were in attendance; (b) the date of each such meeting; (c) the location of each such meeting; (d) the names of the teams and their representatives present at each such meeting; and (e) identify (i) all documents which, directly or indirectly, relate to each such meeting; (ii) all persons who have custody of such documents; and (iii) all persons who are familiar with such meetings and/or documents.

Answer to 71:

The information sought by this interrogatory can be ascertained from the minutes of meetings of the NBA Board of Governors produced to plaintiffs.

Interrogatory 74. (a) Identify for each year since the inception of the NBA, each NBA player who has been on a "voluntary retired list" as defined in Article 1.11 of the NBA By-laws, and as to each such player, state (b) the team or teams whose such list each player's name has appeared, and the period of time on which such player's name appeared, (c) the team or teams which have attempted in any way to reacquire or retain any priority to reacquire such players' services; and (d) identify (i) all documents which refer or relate to all negotiations, contract executions, discussions and meetings concerning such list or priority or reacquisition, (ii) all persons who have custody of such documents; and (ii) all persons who are familiar with such facts and/or documents.

Answer to 74:

Documents responsive to this interrogatory, which will be provided by the NBA, are the NBA player lists (01-06837 to 01-07391; 01-07645 to -1-07739) and all documents relating to player acquisition (see Supplemental Answer to Interrogatory 48,).

Interrogatory 75. State for each year from the inception of the NBA to date the name of the person or persons in a managerial capacity who were responsible for or who participated in the formulation and implementation of policies and practices relating to all forms and changes in form of: (i) the Uniform Player Contract, (ii) reserve clause, (iii) reserve compensation plan, (iv) merger with the ABA, (v) non-competition agreements with the ABA, (vi) collective bargaining with the Players Association and (vii) the college draft.

Answer to 75:

There was no "non-competition" agreement with the ABA as referred to in subparagraph (v) above. Those persons associated with this defendant who might have conceivably participated in the formulation or implementation of such

policies would be listed in the NBA guides, copies of which have been provided to plaintiffs.

Dated: New York, New York
June 9, 1975

NATIONAL BASKETBALL ASSOCIATION

By _____
Simon P. Gouraine

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

SIMON P. GOURDINE, being duly sworn, deposes and says that he is the Deputy Commissioner of the National Basketball Association, one of the defendants in the above-entitled action; that he has read the foregoing answers to plaintiffs' interrogatories and that said answers are true and correct to the best of his knowledge, information and belief.

Simon P. Gourdine

Sworn to before me this
10th day of June, 1975.

Notary Public

NOTARY PUBLIC, State of New York
No. 41-4224945
Qualified in Queens County
Commission Expires

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al., Plaintiffs, -against- NATIONAL BASKETBALL ASSOCIATION, et al., Defendants.	70 Civ. 1526 (RLC)
AMERICAN BASKETBALL ASSOCIATION, et al., Cross-claimants, -against- NATIONAL BASKETBALL ASSOCIATION, et al., Cross-defendants.	

Supplemental Answers to Plaintiffs' First Set of Interrogatories By Defendant Milwaukee Professional Sports Services, Inc.

Defendant Milwaukee Professional Sports & Services, Inc. makes the following supplemental answers to plaintiffs' First Set of Interrogatories.

Interrogatory 2. Identify as to each NBA member team identified in your answer to Interrogatory No. 1 to be a corporation for the period, each officer and director, and each person having an equity interest of 3 per cent or more in the business.

Answer to 2:

Insofar as this interrogatory seeks identification of this defendant's officers and directors, see this defendant's answer to Interrogatory No. 2 of the ABA's First Set of Interrogatories.

See Rider to No. 2 for the answer to the remainder of this interrogatory.

Answer to 21:

See Answer No. 21 of defendant NBA's Answers to Interrogatories, which is adopted by this defendant.

Interrogatory 22. (a) State the basis of your contention that the present NBA reserve or option clause as its exists in the form set forth in ¶22 of the Uniform Player Contract and/or any predecessor form thereof is or was the result of collective bargaining among the NBA players and/or their representatives and the NBA, the NBA teams and/or their representatives, and (b) identify: (i) all documents upon which you base this contention; (ii) all persons who have custody of such documents; and (iii) all persons who are familiar with such contention and/or documents.

Answer to 22:

See Answer No. 22 of defendant NBA's Answers to Interrogatories, which is adopted by this defendant.

Interrogatory 23. (a) Do you contend that the NBA players accepted or acquiesced in the NBA reserve or option clause in return for benefits from the NBA and its member teams, and (b) if so, identify: (i) each such benefit; (ii) all documents upon which such contention is based; (iii) all persons who have custody of such documents; and (iv) all persons who are familiar with such contentions and/or documents.

Answer to 23:

See Answer No. 23 of defendant NBA's Answers to Interrogatories, which is adopted by this defendant.

Interrogatory 24. Identify for each year during the period, each NBA player as to whom any NBA member team has exercised a "right" of contract renewal or option pursuant to the reserve or option clause, and as to each such player (b) state whether he ultimately achieved so-called "free agent" status as defined herein, and (c) identify: (i) all documents which in any way refer or relate to the exercise of such right of contract renewal; (ii) all persons who have custody of such documents; and (d) all persons who are familiar with such facts and/or documents.

Answer to 24:

The following is a list of players, for each year from 1966 to date, as to whom this team exercised a "right"

of contract renewal or option pursuant to the option clause in the NBA Uniform Player Contract:

1966:

1967:

1968:

1969:

1970:

1971: McCoy McClemore
Bill Zopf

1972:

1973: Oscar Robertson
Edward Driscoll
Lucius Allen
Edward Davis

1974: Eldo Garrett
Cornell Warner
Ron Williams
Jon McGlocklin

1975: Cornell Warner
Steve Kuberski
Jim Price

Of the players listed above, the following ulti-

mately achieved "free-agent" status:

None

Interrogatory 28. (a) State your contention as to the form and meaning of the reserve compensation plan and all other means by which NBA teams have agreed to compensate other NBA teams with respect to players whose stated term of contract has expired and who sign a contract to play for another team, whether or not such reserve compensation plan is set forth in the Kennedy affidavit, and set forth each change in such meaning, the date of each such change and the reason for each such change. (b) identify all persons familiar with such understanding or interpretation.

Answer to 28:

Insofar as this interrogatory has not been objected to, see Answer No. 28 of defendant NBA's Answers to Interrogatories, which is adopted by this defendant.

Interrogatory 29. State (a) the place, date and manner in which the reserve compensation plan, as described in the Kennedy arfidavit as heretofore stated, first went into effect in the NBA and (b) the purpose of such plan.

Answer to 29:

See answer No. 28 of defendant NBA's Answers to Interrogatories, which is adopted by this defendant.

Interrogatory 32. (a) State separately the basis for your contentions that: (i) the NBA reserve compensation plan is necessary to organize professional basketball as a league sport; (ii) the NBA reserve compensation plan preserves the competitive balance among the NBA teams and the intergrity of the sport; and (iii) the NBA reserve compensation plan benefits the NBA players, setting forth specifically all such benefits, and (b) identify: (i) all documents upon which you base these contentions; (ii) all persons who have custody of such documents; and (iii) all persons who are familiar with such contentions and/or documents.

Answer to 32:

See Answer No. 32 of defendant NBA's Answers to Interrogatories, which is adopted by this defendant.

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Proskauer Rose Goetz & Mendelsohn
Attorneys for
By

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By